Supreme Court, U.S.
FILED

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No.

In the
Supreme Court of the United States

Christine Todd Whitman, in her official capacity as Governor of the State of New Jersey, James Weinstein, in his official capacity as the Commissioner of the New Jersey Department of Transportation, Col. Carson Dunbar, in his official capacity as the Superintendent of the New Jersey State Police, John J. Farmer, Jr., in his official capacity as the Attorney General of the State of New Jersey,

Petitioners,

v.

American Trucking Associations, Inc., and US Xpress, Inc.,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether State highway safety regulations, which reflect the exercise of a core State governmental function, which are proven to protect the lives and safety of residents and the motoring public, and which have an unintended, incidental effect on interstate commerce are subject to strict scrutiny analysis under the dormant Commerce Clause?

TABLE OF CONTENTS

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS INVOLVED 1

STATEMENT OF THE CASE 2

A. Factual Background 2

B. District Court Proceedings 5

C. The Court of Appeals Decision 7

REASONS FOR GRANTING THE WRIT 8

CONCLUSION 15

TABLE OF AUTHORITIES

CASES CITED

American Trucking Ass'ns v. Whitman,
437 F.3d 313 (3d Cir. 2006) ..... *passim*

American Trucking Ass'ns v. Whitman,
136 F. Supp. 2d 343 (D.N.J. 2001) ..... *passim*

Bibb v. Navaho Freight Lines, Inc.,
359 U.S. 520 (1959) 9, 10

C & A Carbone, Inc. v. Town of Clarkstown,
511 U.S. 383 (1994) ..... *passim*

Camps Newfound/Owatona, Inc. v. Town of Harrison,
520 U.S. 564 (1997) 10, 11

City of Philadelphia v. New Jersey,
437 U.S. 617 (1978) 7, 9, 11

Fulton Corp. v. Faulkner, 516 U.S. 325 (1996) 9

Granholm v. Heald, 544 U.S. 460 (2005) 10

Hillsborough County v. Automated Med. Labs.,
471 U.S. 707 (1985) 14

Kassel v. Consolidated Freightways Corp.,
450 U.S. 662 (1981) ..... *passim*

Medtronic v. Lora Lohr, 518 U.S. 470 (1996) 14

Pike v. Bruce Church, Inc., 397 U.S. 137 (1970) 11

Printz v. United States, 521 U.S. 898 (1997) 13

Raymond v. Motor Transp., Inc. v. Rice,
434 U.S. 429 (1978) 10

CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS CITED

U.S. Const. art. I, §8, cl. 3 ..... 1, 9

28 U.S.C. §1254(1) 1

N.J. Stat. Ann. 39:3-84.3 (West 2004). 3

REGULATIONS CITED

23 C.R.F. Part 658 App A 2

N.J. Admin. Code tit. 16:32-1.1, *et seq.*. 1

N.J. Admin. Code tit. 16:32-1.2 (2001) 2

N.J. Admin. Code tit. 16:32-1.4 (c) (1999) 3

N.J. Admin. Code tit. 16:32-1.4(a) (1999) 3

N.J. Admin. Code tit. 16:32-1.5(a)(1999) 3

N.J. Admin. Code tit. 16:32-1.5(e)(1999) 3

N.J. Admin. Code tit. 16:32-1.6 (1999) 2, 3

OTHER SOURCE CITED

The Federalist No. 39 13

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit was filed on February 21, 2006 (App., *infra*, 1a-19a) and is reported at 437 F.3d 313 (3rd Cir. 2006). The first opinion of the district court in this matter was filed on March 22, 2001, (App., *infra*, 53a-72a) and is reported at 136 F. Supp. 2d 343 (D.N.J. 2001). The second opinion of the district court in this matter was issued on March 24, 2004, (App., *infra*, 26a-52a) and is unreported.

JURISDICTION

The Court of Appeals' judgment was entered on February 17, 2006. (App., *infra*, 20a-21a). On May 16, 2006, Justice Souter entered an order extending to June 21, 2006, the time within which petitioners were permitted to file this petition. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND REGULATORY PROVISIONS INVOLVED

The Commerce Clause of the United States Constitution provides that "The Congress shall have Power . . . To regulate Commerce . . . among the several States . . . ." U.S. Const. art. I, §8, cl.3.

The relevant New Jersey Department of Transportation regulations at issue in this appeal are N.J. Admin. Code §16:32-1.1, *et seq.* and appear at length in the Appendix, *infra*, at 74a-78a.

STATEMENT OF THE CASE

A. Factual Background

In the 1980s, in response to the trucking industry's desire to use 102-inch wide trucks and double tractor trailer combinations ("Restricted Vehicles"), the federal government required States to establish a connected National Network of interstate highways on which these larger trucks could legally and safely travel. New Jersey complied with the federal directive and established a network of interstate highways and other roads for the safe passage of commercial traffic in the State.[1] The National Network consists of 545.7 miles of roads in New Jersey, including sections of I-76, I-78, I-80, I-95, I-287, I-295, I-676, NJ 42, NJ 81, US 130, US 322, NJ 440, the New Jersey Turnpike, and the Atlantic City Expressway (the "National Network"). N.J. Admin. Code tit. 16:32-1.4(a) (1999).

Because of the significant threat to health and safety posed by large trucks on increasingly crowded local roads, on or about July 16, 1999, the New Jersey Department of Transportation ("NJDOT") adopted emergency highway safety regulations (the "Regulations") applicable to Restricted Vehicles. The Regulations were adopted as final effective September 15, 1999. On June 18, 2001, the Regulations were amended. N.J. Admin. Code tit. 16:32-1.2 (2001).

Under the Regulations as amended, Restricted Vehicles which do not have an origin or destination in New Jersey must use the National Network when traveling in New Jersey. N.J. Admin. Code tit. 16:32-1.6 (1999). Restricted Vehicles that are engaged in purely intrastate commerce or in interstate commerce that includes an origin or destination in New Jersey are able to use the National Network, as well as a series of

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[1] The National Network roads in New Jersey are designated at 23 C.R.F. Part 658 App. A.

roadways ancillary to the National Network, many of which meander through populated areas thick with non-commercial traffic (the "NJ Access Network"). N.J. Admin. Code tit. 16:32-1.5(a)(1999). In addition, the Regulations permit all trucks to leave the National Network and NJ Access Network for short trips to access food, fuel, repairs and rest. N.J. Admin. Code tit. 16:32-1.4 (1999); N.J. Admin. Code tit. 16:32-1.6 (1999).

Penalties for violating the Regulations include a mandatory fine of no more than $400 for the first violation; a mandatory fine of $700 for the second violation; and a mandatory fine of $1,000 for each subsequent violation. N.J. Stat. Ann. 39:3-84.3 (West 2004).

The purpose of the Regulations is to reduce the number of large trucks on local roads in order to protect the health, safety, and welfare of New Jersey residents and individuals from other States using New Jersey's roadways. N.J. Admin. Code tit. 16:32-1.4(c)(1999); N.J. Admin. Code tit. 16:32-1.5(e) (1999). "The state's aim is to reduce accidents and motorist deaths from truck-related collisions by reducing the number of large trucks on local roads which are mostly 'two and four-lane, undivided streets, some lined with commercial establishments and homes, and others remote, winding roads in rural areas.'" *American Trucking Ass'ns v. Whitman*, 136 F. Supp. 2d 343, 351-352 (D.N.J. 2001).

Truck traffic in New Jersey rose by 1.5 billion vehicle miles traveled between 1991 and 1998. (37a). There were approximately 20,000 accidents involving trucks in New Jersey in 1997, with an increase of between 5-10% in 1998. *Ibid.* Truck accident rates are approximately twice as high on state and county highways (likely to be part of the NJ Access Network) than on Interstate Highways (likely to be part of the National Network). (37a) Studies reveal that prior to enactment of the Regulations, a significant number of large trucks traveling on non-interstate highways, as many as 25% on some routes, had no destination or origin in New Jersey. (37a).

American Trucking Associations ("ATA") is a non-profit, national trucking trade association representing more than 2,000 members, including trucking companies, trucking company suppliers, and individuals involved in the trucking industry. (34a). ATA filed this action on behalf of its members. *Ibid.* Plaintiff US Xpress, Inc., a Nevada corporation, is an interstate motor carrier based in Tennessee. *Ibid.* USX regularly engage in interstate commerce in New Jersey, often through use of Restricted Vehicles. *Ibid.*

Defendants are former New Jersey officials sued in their official capacities. Defendant Honorable Christine Todd Whitman was the Governor of New Jersey at the time that the Complaint was filed. (27a). Defendant James Weinstein was the Commissioner of the New Jersey Department of Transportation, defendant John J. Farmer, Jr., was the Attorney General of New Jersey, and Colonel Carson Dunbar was the Superintendent of the New Jersey State Police at the time that the Complaint was filed. *Ibid.*

Plaintiffs filed suit in the United States District Court of the District of New Jersey against New Jersey officials to block implementation of the Regulations. Plaintiffs alleged jurisdiction in the trial court based on 28 U.S.C. §1331, and claimed that the Regulations violate the Commerce Clause, U.S. Const. art. I, sec. 8, cl. 3, because they are facially discriminatory, as Restricted Vehicles engaged in New Jersey commerce are not subject to all of the restrictions contained in the Regulations. (27a-33a). In addition, plaintiffs allege that the Regulations violate the Commerce Clause because they unreasonably burden interstate commerce by increasing fuel consumption, travel time and tolls for Restricted Vehicles engaged in non-New Jersey interstate commerce. *Ibid.* Additional Constitutional claims were alleged in the initial pleadings but abandoned by plaintiffs prior to trial.

B. District Court Proceedings

After cross-motions for summary judgment, on March 22, 2001, the District Court issued an Opinion holding that the Regulations were not facially discriminatory. 136 F. Supp. 2d 343. Judge Cooper correctly reasoned that the Regulations are not facially discriminatory because "[w]hile the Regulations make a distinction between trucks with and without an origin or destination in New Jersey . . . the Regulations apply evenhandedly without regard to citizenship of the truck driver or owner." *Id.* at 350. The restrictions established in the Regulations apply "with equal force to all truck drivers." *Ibid.*

The trial court, however, denied summary judgment, holding that a trial was necessary to develop a record with respect to whether the Regulations impose actual increases in time and expense on interstate truckers not imposed on intrastate truckers. *Id.* at 351. As the court noted, "[e]vidence of a *significant* expense to out-of-state trucking not suffered by in-state trucking would demonstrate that the Regulations discriminate in their effect against out-of-state interests." *Ibid.* (footnote omitted)(emphasis added).

In addition, the trial court held that if, after accumulation of an evidentiary record, the Regulations were found to discriminate in effect against interstate commerce, the heightened scrutiny standard would be applied to determine if the Regulations violate the Commerce Clause. *Ibid.* Under that standard, the Regulations would be upheld "if the defendants were to demonstrate that no alternative, nondiscriminatory means exist to accomplish their legitimate local purpose." *Ibid.* "Assuming, on the other hand, that we find the Regulations are not discriminatory, we will apply the highly deferential standard of review . . . and uphold the regulations absent a showing that the safety benefits are slight, problematic or illusory." *Id.* at 352.

After a five-day bench trial, the trial court, on March 24, 2004, issued an Opinion and Order invalidating the Regulations

as violative of the Commerce Clause. (App. *infra*, 24a-52a). The trial court found that the predicted health and safety benefits from implementation of the Regulations had proven accurate. The court found that the Regulations would have resulted in 12 fewer truck accidents in New Jersey in 1997 and nine fewer in 1998. (42a). As the trial court held, the "evidence circumstantially establishes that the Regulations have improved the safety of New Jersey's roads by resulting in fewer truck accidents in New Jersey." (42a). Yet, the court gave these benefits no weight when assessing the constitutionality of the Regulations.

At trial, defendants' expert offered testimony that the Regulations, while causing an increase in tolls for interstate truckers, would result in a new positive economic impact on them because the savings in tolls from the use of the NJ Access Network is nullified or outweighed by the additional miles and time travel associated with the use of these roads. Plaintiffs' expert disputed this contention and offered testimony that the Regulations would have a total net impact of $19.64 million per year on the tens of thousands of truckers who drive billions of highway miles through New Jersey each year. (38a). The trial court, after expressing skepticism about the methodology used by plaintiffs' expert, accepted his opinion.

The trial court held that this unintentional, incidental impact on interstate commerce was, in effect, sufficient to render the Regulations *per se* invalid. New Jersey's constitutional interest in fulfilling its core governmental function of protecting the health and safety of its citizens and those who travel through the State, the success of the Regulations in carrying out that important mission, and the unintentional nature of the effect that the Regulations had on interstate commerce were overlooked by the trial court.

C. The Court of Appeals Decision

The Third Circuit compounded the trial court's error. The Court began its analysis by holding that a "state law that discriminates against interstate commerce faces 'a virtually per se rule of invalidity' under the dormant *Commerce Clause*." *American Trucking Ass'ns v. Whitman*, 437 F.3d 313, 318 (quoting *City of Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978)). Thus, the appeals court applied the heightened scrutiny standard to New Jersey's Regulations, despite the fact that the trial court had found only an unintentional effect on interstate commerce from rules that successfully carried out the State's important interest in saving lives and protecting people and property. *Id.* at 318-319. Glossing over any deference that might be paid to a State's effort to effectuate a core governmental purpose, the lack of any intent to favor intrastate economic interests, and the reserve of power vested in the States by the Constitution, the Third Circuit merely held that "[i]f a regulation discriminates against interstate commerce on its face or in effect, then heightened scrutiny applies." *Id.* at 319.

The appeals court relied on this Court's purported holding in *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383 (1994), that any "statute that did not explicitly seek to *regulate* interstate commerce but nonetheless did so 'by its practical effect and design' was subject to heightened scrutiny." *American Trucking, supra*, 437 F.3d at 319 (quoting *C & A Carbone, supra*, 511 U.S. at 394). Applying this unnecessarily restrictive standard, the Court of Appeals held that the Regulations had a discriminatory effect on interstate commerce and that nondiscriminatory alternatives were available to New Jersey to carry out the salutary purpose of the Regulations. *Id.* at 323-324.[2]

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[2] Although the Court of Appeals stayed the issuance of a mandate on its judgment for 45 days, (22a-23a), that time has expired and the Regulations presently cannot be enforced. The

REASONS FOR GRANTING THE WRIT

This Court Should Grant the Writ to Settle an Important Question of Federal Law: Whether the Dormant Commerce Clause Requires Strict Scrutiny Analysis of State Highway Safety Regulations Proven to Protect the Health And Safety of Citizens and the Traveling Public, but Which Have an Unintended, Incidental Effect on Interstate Commerce.

New Jersey enacted highway safety regulations to divert large tractor trailers from congested local roads, where these trucks had caused fatalities, injuries, and property damage in numerous accidents. These regulations proved effective by reducing loss of life and bodily harm from accidents between passenger vehicles and tractor trailers. However, because the regulations had an unintended, incidental effect on interstate commerce, the Third Circuit found them to be virtually *per se* invalid under the dormant Commerce Clause and applied strict scrutiny analysis before striking down these important safeguards.

Neither New Jersey's constitutional interest in exercising its core governmental function of protecting its citizens and the people traveling through the State, nor the unintended nature of the regulations' effect on interstate commerce were considered by the Court of Appeals in reaching its decision, despite suggestions in this Court's precedents that those considerations are a necessary component of dormant Commerce Clause analysis. The lower court's error likely stemmed from the absence of a clear holding from this Court that State highway

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NJDOT has reinstated the highway rules that were in place prior to adoption of the Regulations. Those rules were reinstated only in response to the Third Circuit's decision and NJDOT desires to reinstate the Regulations invalidated by the Court of Appeals if victorious in this Court.

safety regulations are entitled to a deferential standard of review and should be invalidated under the dormant Commerce Clause only if the justifications offered for the regulations are a pretext for discrimination and the benefits derived from the regulations are trivial. In the absence of such precedent the States' crucial interests will be stymied and the constitutional balance between the reserve of power vested in the States in our Constitutional framework of government and the need to protect interstate commerce will tilt too far from the constitutional objective of State sovereignty.

The Commerce Clause authorizes Congress to "regulate Commerce . . . among the several States . . . ." U.S. Const. art. 1, § 8, cl. 3. The dormant Commerce Clause is a "judicial creation" that presumes that the Clause "not only empowers Congress to regulate interstate commerce, but also imposes limitations on the States in the absence of congressional action . . . ." *C & A Carbone, supra,* 511 U.S. at 401 (O'Connor, J., concurring). The essence of the Clause is that one State, in its dealings with other States, may not "place itself in a position of economic isolation . . . ." *City of Philadelphia, supra,* 437 U.S. at 623 (quotations omitted). Nor may a State enforce "economic protectionism" by penalizing interstate commerce for the benefit of similar intrastate economic activity. *Fulton Corp. v. Faulkner,* 516 U.S. 325, 330 (1996).

This Constitutional limitation, however, is tempered by the States' vital interest in carrying out core governmental functions. This Court has recognized that the States retain authority to regulate commerce in matters traditionally of local concern. *Kassel v. Consolidated Freightways Corp.*, 450 U.S. 662, 670 (1981). Highway safety is a peculiarly local subject, and this Court has upheld State regulations in this area that apply equally to intrastate and interstate commerce, even though they have an unintended, indirect impact on interstate commerce. *Bibb v. Navaho Freight Lines, Inc.*, 359 U.S. 520, 523 (1959). State regulations that touch on safety and, in particular, highway safety have a strong presumption of validity. *Id.* at 524. "Indeed, if safety justifications are not

illusory, the Court will not second-guess legislative judgment about their importance in comparison with related burdens on interstate commerce.'" *Kassel, supra*, 450 U.S. at 670 (quoting *Raymond v. Motor Transp., Inc. v. Rice*, 434 U.S. 429, 449 (1978)(Blackmun, J., concurring)). "In no field has this deference to state regulation been greater than that of highway safety regulations." *Raymond, supra,* 434 U.S. at 443.

In *Bibb, supra*, this Court likened state highway safety regulations to quarantine legislation, game laws, and other areas where the States have "exceptional scope for the exercise of . . . regulatory power," noting that the Court has sustained State measures even though they "materially interfere with interstate commerce." 359 U.S. at 523-524. Policy decisions about such local concerns are for the State legislatures and will not be second guessed unless the total effect of the law as a safety measure in reducing accidents and casualties is so slight that it does not outweigh the national interest in avoiding interference that seriously impedes interstate commerce. *Ibid.*

This Court's precedents, however, do not articulate a clear definition of the States' authority under the dormant Commerce Clause in this crucial area. Significantly, dormant Commerce Clause opinions of this Court in the past two decades have rarely been unanimous, frequently generating concurring and dissenting opinions disputing the standard applied by the majority, as well as the result of the analysis. See, for example, *C & A Carbone, supra*; *Granholm v. Heald*, 544 U.S. 460 (2005); *Camps Newfound/Owatona, Inc. v. Town of Harrison*, 520 U.S. 564 (1997). Justice Thomas--joined by then-Chief Justice Rehnquist and Justice Scalia--in his lengthy dissent in *Camps Newfound*, questioned the textual and historical basis for the increasing limitations on States' regulation of local matters under dormant Commerce Clause jurisprudence. In his dissent, Justice Thomas cited scholarly commentary that "the Court has set no conscious standard but has rather, in an imperial way, decided whether each particular state action presented to it was or was not an invalid regulation of interstate

commerce." 520 U.S. at 611 n4. (internal quotations and citation omitted).

This lack of a precise rule is a disservice to the States in the execution of core governmental functions and results in decisions like that of the Court of Appeals below. Important State regulations, proven to be effective in protecting the lives and health of citizens, are cast aside because of an unintended, indirect effect of the regulations on interstate commerce. Such rulings both undermine the States' position in our governmental framework and expand the dormant Commerce Clause beyond the bounds necessary to prevent States from engaging in economic protectionism.

The Court has applied two lines of analysis when examining State legislation under the dormant Commerce Clause. Where a State law is facially discriminatory or its clear purpose is economic protectionism, heightened scrutiny applies, and the legislation is often considered *per se* invalid. *City of Philadelphia, supra,* 437 U.S. at 624. Defendants do not dispute the validity of this line of cases.

On the other hand, where "other legislative objectives are credibly advanced and there is no patent discrimination against interstate trade, the Court has adopted" a more flexible approach. *Ibid.* In the second category of cases the deferential test in *Pike v. Bruce Church, Inc.,* 397 U.S. 137, 142 (1970), applies:

> Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to its putative local benefits. . . . If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local

> interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.

In this case, the Court of Appeals held that the deferential standard for State highway safety regulations did not apply because the Regulations were both facially discriminatory and had a discriminatory effect, even though the court recognized both that the Regulations were accomplishing their important, non-discriminatory purpose, and that the effect on interstate commerce was unintended and incidental. The court rejected defendants' argument that State highway safety regulations are entitled to a more accommodating standard of review. The Court of Appeal held that the State's position was rejected by this Court in *C & A Carbone, supra,* over extending the holding in that case to say that "a statute that did not explicitly seek to *regulate* interstate commerce but nonetheless did so 'by its practical effect and design' was subject to heightened scrutiny" even for highway safety regulations. *American Trucking, supra*, 437 F.3d at 319 (quoting *C & A Carbone, supra,* 511 U.S. at 394). However, nothing in *C & A Carbone*, a waste flow case, indicates that this Court was disapproving of the deferential standard that it previously applied to highway safety regulations.

Instead, it is the prevailing principles animating the two multi-Justice opinions in *Kassel, supra,* neither of which was denominated as the Opinion of the Supreme Court, that serve as the controlling precedent in this area. On the one hand is the four-Justice plurality opinion of Justice Powell, which employs a balancing test that acknowledges the strong presumption of validity given to regulations "that touch upon safety -- especially highway safety . . ." 450 U.S. at 670. Under this analysis, such regulations must be upheld unless the salutary purpose for which the regulations were designed is only marginally furthered by a law which so substantially interferes with commerce as to be invalid under the Commerce Clause. *Ibid.*

On the other hand, is then-Justice Rehnquist's three-Justice opinion, which rejects the balancing test articulated by Justice Powell. Instead, recognizing that "[t]hose challenging a highway safety regulation must overcome a strong presumption of validity," he stated that the Court should not "directly compare safety benefits to commerce costs and strike down the legislation if the latter can be said in some vague sense to 'outweigh' the former.'" *Id.* at 690-91 (Rehnquist, J., dissenting)). In then-Justice Rehnquist's view, this Court is limited "to determin[ing] if the asserted safety justification, although rational, is merely a pretext for discrimination against interstate commerce." *Id.* at 698. A highway safety regulation will be invalidated under this analysis only "if the safety benefits from the regulation are demonstrably trivial while the burden on commerce is great." *Id.* at 692. Two other Justices issued a concurring opinion that set forth a less deferential test in which highway safety regulations are presumptively invalid if they impact on interstate commerce. *Id.* at 679-80 (Brennan, J., concurring).

Under either rule articulated by the fractured *Kassel* Court, State highway safety regulations that are not intended to discriminate against interstate commerce are not subjected to strict scrutiny. Yet, because of the absence of a controlling majority in that case and no clear articulation of a standard for reviewing regulations of this nature, the courts of appeals lack guidance in this important area, leaving the States subject to an unjustified reduction of their authority under the Constitution.

As this Court has recognized, "[a]lthough the States surrendered many of their powers to the new Federal government, they retained 'a residuary and inviolable sovereignty.'" *Printz v. United States*, 521 U.S. 898, 918-19 (1997)(quoting The Federalist No. 39). [illegible] dual system is "one of the Constitution's structural protections of liberty." *Id.* at 921. Thus, "it is an essential attribute of the States' retained sovereignty that they remain independent and autonomous within their proper sphere of authority." *Id.* at 928. Included in the "sphere of authority" that remains with the States is the

exercise of police power. This includes the protection of public health, safety and welfare *See Medtronic v. Lora Lohr*, 518 U.S. 470, 475 (1996)("throughout our history the several States have exercised their police powers to protect the health and safety of their citizens."); *Hillsborough County v. Automated Med. Labs.*, 471 U.S. 707, 719 (1985)(describing police powers as "primarily and historically . . . matter[s] of local concern").

Few things are more essential to the purpose of State government than the protection of the lives and safety of citizens. Highway safety regulations, proven in this case to have saved lives and insulated persons from injury, are a quintessential example of the exercise of State police power. Application of the strict scrutiny standard to such laws merely because they have an unintended, incidental effect on interstate commerce threatens the ability of the States effectively to exercise their Constitutional powers. Without a clear decision from this Court recognizing the Constitutional dimension of the State's authority when highway safety regulations are examined under the dormant Commerce Clause, the lower courts lack the guidance needed to protect properly the Constitutional balance between State sovereignty and the protection of interstate commerce.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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Dated: June 19, 2006

APPENDIX

APPENDIX

A. Opinion of United States Court of Appeals for the Third Circuit (February 21, 2006) 1a

B. Judgment of United States Court of Appeals for the Third Circuit (February 17, 2006) 20a

C. Order of the United States Court of Appeals for the Third Circuit Staying Issuance of the Mandate (March 2, 2006) 22a

D. District Court Opinions and Orders

1. Order of United States District Court for the District of New Jersey (March 24, 2004) 24a

2. Opinion of United States District Court for the District of New Jersey (March 24, 2004) 26a

3. Opinion of United States District Court for the District of New Jersey (March 22, 2001) 53a

E. Constitutional Provision

U.S. Const. art. I, §8, cl.3 ..... 73a

F. New Jersey Regulations

N.J. Stat. Ann. 39:3-84.3 (West 2004). 74a

APPENDIX A

PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-2201

AMERICAN TRUCKING ASSOCIATIONS, INC. and US XPRESS, INC.,

v.

CHRISTINE TODD WHITMAN, in her official capacity as the Governor of the State of New Jersey; JAMES WEINSTEIN, in his official capacity as the Commissioner of the New Jersey Department of Transportation; COL. CARSON DUNBAR, in his official capacity as the Superintendent of the New Jersey State Police; JOHN J. FARMER, JR., in his official capacity as the Attorney General of the State of New Jersey,

Appellants

On Appeal from the United States District Court for the District of New Jersey
(D.C. No. 00-489)
District Judge: Honorable Stanley R. Chesler

Argued September 26, 2005
Before: RENDELL, FUENTES, and GARTH,
Circuit Judges.
(Opinion Filed: February 21, 2006)

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OPINION OF THE COURT

FUENTES, Circuit Judge.

In 1999, in response to the threat to health and safety posed by large trucks on local roads, the New Jersey Department of Transportation adopted emergency highway safety regulations (the "Regulations") designed to detour some of those trucks away from local roads and congested areas. The Regulations require double-trailer truck combinations and 102-inch-wide tractor trailers (collectively, "restricted vehicles") traveling through New Jersey, with neither an origin nor a destination in the state, to use the national network of interstate highways (the "National Network")[1] rather than New Jersey state highways and local roads (the "New Jersey Network"). This case requires us to determine whether the Regulations discriminate against interstate commerce in violation of the dormant Commerce Clause. Because the Regulations favor instate businesses over those out-of-state businesses that are neither buying nor selling goods in New Jersey by imposing economic burdens on the out-of-state interests while not imposing similar burdens on the instate interests, we hold that the Regulations discriminate against interstate commerce. Furthermore, as there exist available nondiscriminatory alternatives, we hold that the Regulations violate the dormant Commerce Clause. We accordingly affirm the judgment of the District Court.

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[1] The National Network roads are designated at 23 C.F.R. Part 658 App. A. In New Jersey, that Network includes sections of I-76, I-78, I-80, I-95, I-195, I-278, I-280, I-287, I-295, I-676, N.J. 42, N.J. 81, U.S. 130, U.S. 322, N.J. 440, the New Jersey Turnpike, and the Atlantic City Expressway. N.J. Admin. Code § 16:32-1.4(a) (1999).

I. Factual and Procedural Background

In the 1980s, in response to the trucking industry's desire to use 102-inch wide trucks and double-trailer truck combinations, the federal government required states to establish the National Network, a connected network of interstate highways to permit interstate travel by these vehicles. New Jersey complied with this directive, resulting in 545.7 miles of roads in New Jersey that contribute to the National Network.

Years later, in response to the threat to health and highway safety posed by large trucks on local roads, the New Jersey Department of Transportation adopted the Regulations, which were designed to reroute large trucks onto the National Network. The Regulations require restricted vehicles that do not have an origin or destination in New Jersey to use the National Network while in New Jersey, except as necessary to access food, rest, repairs, and fuel. N.J. Admin. Code § 16:32-1.1 (1999). However, restricted vehicles engaged in purely intrastate commerce or in interstate commerce that includes an origin or destination in New Jersey are able to use both the National Network and the New Jersey Network. N.J. Admin. Code § 16:32-1.4. The New Jersey Network consists of roadways secondary to the National Network that often snake through populated areas and are heavy with non-commercial traffic. N.J. Admin. Code § 16:32-1.5(a) (1999). Penalties for violating the Regulations include a mandatory fine of no more than $400 for the first violation, a mandatory fine of $700 for the second violation, and a mandatory fine of $1000 for each subsequent violation.

Soon after the adoption of the Regulations, plaintiffs American Trucking Associations, Inc. ("American Trucking") and US Xpress filed a complaint in the United States District Court for the District of New Jersey alleging that the Regulations violate the dormant Commerce Clause of the United States Constitution. U.S. Const. art. I, § 8 cl. 3.

American Trucking is a non-profit national trucking trade association suing on behalf of its members. US Xpress, a Nevada corporation, is an interstate motor carrier based in Tennessee. The defendants are former New Jersey officials that the plaintiffs sued in their official capacities.

The plaintiffs sought an order declaring the Regulations unconstitutional and an order enjoining the defendants (the "state officials") from enforcing the Regulations. After a period of discovery, both parties filed motions for summary judgment, which the District Court denied. The judge hearing the motions determined that the Regulations are not facially discriminatory because, although "the Regulations [distinguish] between trucks with and without an origin or destination in New Jersey," they are applied "with equal force to all truck drivers." Am. Trucking Ass'ns, Inc. v. Whitman, 136 F. Supp. 2d 343, 350 (D.N.J. 2001). Though the District Court concluded that the Regulations are not facially discriminatory, it denied summary judgment because an evidentiary record was needed to determine whether the Regulations impose costs and delays on out-of-state trucking. According to the District Court, "[e]vidence of a significant expense to out-of state trucking not suffered by in-state trucking would demonstrate that the Regulations discriminate in their effect against out-of-state interests" Id. at 351.

In September 2003, the parties commenced a five-day bench trial before a different judge. During the trial, Dr. Lazar Spasovic, testifying for the state officials, stated that, despite a New Jersey Department of Transportation study demonstrating that the Regulations would force many interstate trucks to take longer and costlier routes when required to use the National Network rather than the New Jersey Network, the Regulations would not adversely affect interstate commerce. Spasovic based this conclusion on a theory that some truck drivers were using the New Jersey Network only to avoid tolls, even when that choice involved higher aggregate costs of time and fuel for those trucks. According to Spasovic, those interstate trucks

would save money by using the National Network, and those savings would outweigh the additional costs the Regulations cause other interstate trucks; thus the Regulations would have a net positive impact.

The state officials also argued that, even if the Regulations were discriminatory, they do not violate the dormant Commerce Clause because there are no available non-discriminatory means with which to achieve the legitimate goal of decreasing truck traffic on local roads. Assistant Commissioner and State Planning Engineer Dennis Keck testified that a non-discriminatory statute that prohibited all restricted vehicles from using the New Jersey Network, except as necessary to reach New Jersey origins or destinations or for food, rest, repairs, and fuel, would be nearly impossible to enforce. Keck testified that such a statute would require law enforcement officials to stop trucks on the New Jersey Network randomly to ensure compliance with the statute, and to perform complex calculations to discern whether the trucks needed to be at that point on the New Jersey Network to reach a New Jersey destination or to reach the National Network from a New Jersey origin.

At the conclusion of the trial, the District Court held that the Regulations violate the dormant Commerce Clause and accordingly enjoined the state officials from enforcing them. Am. Trucking Ass'ns. Inc. v. Whitman, No. 00-CV-489, 2004 WL 601659, at * 11 (D.N.J. Mar. 24, 2004). The District Court found that Spasovic's conclusion was based on the unreasonable assumption that truck drivers were acting against their economic interest. Id. at *5-6. In other words, the District Court did not accept Spasovic's assertion that interstate truck drivers were using the New Jersey Network to avoid paying tolls even though those truck drivers paid more in fuel and increased travel time by taking local road detours. The District Court therefore rejected Spasovic's conclusion that the Regulations would result in a net positive economic impact by correcting the irrational behavior of many interstate truck

drivers. Id. at *6. Moreover, the District Court found that, regardless of whether the Regulations provide a net positive economic impact, the evidence showed that the Regulations force many truckers to engage in conduct counter to their economic interests. Id. The District Court concluded that the Regulations are discriminatory in effect. Id. at *9-10.

Additionally, the District Court found that, although the Regulations advance the legitimate local purpose of improving highway safety, there are available non-discriminatory means to accomplish that goal. Id. at *10-11. Specifically, the District Court noted that the state officials could accomplish the same legitimate local purpose by prohibiting all restricted vehicles from using the New Jersey Network except as necessary to: 1) reach a New Jersey destination from the National Network; 2) reach the National Network from a New Jersey origin; or 3) access food, rest, fuel, or repairs. Id. at *11 n.11. Because a non-discriminatory alternative was available, the District Court held that the Regulations discriminate against interstate commerce in violation of the dormant Commerce Clause. Id. at *11.

The state officials timely filed a notice of appeal on April 23, 2003.

II. Regulatory Background

First, we must consider the state law at issue. The Regulations, enacted in 1999, determine which roads may be used by restricted vehicles traveling in New Jersey. The Regulations describe their purpose as follows:

> The New Jersey Department of Transportation has determined that it is in New Jersey's best interest to limit interstate through travel of large trucks to the National Network, the NJ Turnpike, and the Atlantic City Expressway. Large trucks restricted herein include 102-inch wide standard trucks and double trailer truck

> combinations. Interstate through travel for the purposes of this chapter shall be a trip with both an origin and destination outside of New Jersey. Reasonable access shall be permitted to terminals and to facilities for food, fuel, repairs and rest.
>
> N.J. Admin. Code § 16:32-1.1 (1999).

A "double trailer-truck combination" is defined as "a truck tractor-semitrailer-trailer combination, and which meets the equipment length requirement as set forth in N.J.S.A. 39.3-84 and 23 CFR 658.13." N.J. Admin. Code § 16:32-1.2 (1999). The Regulations define "102-inch wide standard truck" as "a truck greater than 96 inches but not greater than 102 inches in width, exclusive of mirrors and other safety devices, and which meets the equipment length requirements as set forth in N.J.S.A. 39:3-84(3) and (4), as amended." Id. "Interstate through travel" is defined as "a trip with neither an origin nor destination in New Jersey." Id.

Under the Regulations, "double-trailer truck combinations and 102-inch wide standard trucks in interstate through travel may be operated in New Jersey only on the National Network . . . in addition to the New Jersey Turnpike, and the Atlantic City Expressway." N.J. Admin Code § 16:32-1.4(a). However, the Regulations allow that,

> "[a] double-trailer truck combination is permitted access from [the National Network] to facilities providing food, fuel, repairs and rest, within one mile roadway distance from the designated system except upon those roads, highways, streets, public alleys or other thoroughfares which cannot safely accommodate a double-trailer truck combination and are so designated by the Department."
>
> N.J. Admin. Code § 16:32-I.6(c).

Thus, under the Regulations, restricted vehicles traveling

through New Jersey with no origin or destination in New Jersey must use the National Network, and are prohibited from using the New Jersey Network except as necessary to access food, fuel, repairs or rest. Restricted vehicles engaged in intrastate travel or in interstate travel with an origin or destination in New Jersey have unlimited access to the New Jersey Network.

III. Legal Analysis

A. The Commerce Clause

The Commerce Clause gives Congress the power "to regulate Commerce . . . among the several States." U.S. Const. art. I, § 8 cl. 3. "Although the Clause thus speaks in terms of powers bestowed upon Congress, the Court has long recognized that it also limits the power of the States to erect barriers against interstate trade." Lewis v. B.T. Inv. Managers. Inc., 447 U.S. 27, 35 (1980). In other words, there is a "dormant" Commerce Clause "which limits state authority to regulate areas where Congress has not affirmatively acted to either authorize or forbid the challenged state activity." Harvey & Harvey. Inc. v. County of Chester, 68 F.3d 788, 796 (3d Cir. 1995) (internal quotation marks and citations omitted). Because Congress has neither prohibited nor authorized the highway safety regulations at issue here, we must determine whether the Regulations violate the dormant Commerce Clause.

The dormant Commerce Clause "prohibits the states from imposing restrictions that benefit in-state economic interests at out-of-state interests' expense, thus reinforcing 'the principle of the unitary national market.'" Cloverland-Green Spring Dairies, Inc. v. Pa. Milk Mktg. Bd., 298 F.3d 201, 210 (3d Cir. 2002) (quoting West Lynn Creamery, Inc. v. Healy, 512 U.S. 186, 193 (1994)). The dormant Commerce clause therefore prohibits a state from impeding free market forces to shield in-state businesses from out-of-state competition. Id. A state law that discriminates against interstate commerce faces "a virtually per se rule of invalidity" under the dormant Commerce Clause.

Philadelphia v. New Jersey, 437 U.S. 617, 624 (1978).

B. The Appropriate Level of Scrutiny

To determine whether the Regulations violate the dormant Commerce Clause, the District Court applied the heightened scrutiny standard. The state officials argue that the District Court erred because, under American Trucking Ass'ns v. Larson, 683 F.2d 787 (3d Cir.1982), all highway safety regulations are entitled to deferential treatment. (Defendants' Brief at 19-20, 22.)

We have previously stated that the level of scrutiny to be applied to a statute or regulation that affects interstate commerce is contingent upon whether the court finds that the statute or regulation is discriminatory. See Cloverland-Green, 298 F.3d at 210-11; Harvey & Harvey, 68 F.3d at 797; Old Coach Dev. Corp. v. Tanzman, 881 F.2d 1227, 1231 (3d Cir. 1989). There are two ways in which a statute could discriminate against interstate commerce and thus be subject to heightened scrutiny: on its face (interchangeably referred to as having a discriminatory purpose) or in effect.[2] See Old Coach, 881 F.2d

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[2] In Norfolk S. Corp. v. Oberly, 822 F.2d 388 (3d Cir. 1987), we expressed some doubt about whether statutes that are discriminatory in effect truly merit the application of strict scrutiny. 822 F.2d at 400-01 n.18. However, this doubt was subsequently resolved by the Supreme Court's decision in C & A Carbone, Inc. v. Town of Clarkstown, 511 U.S. 383 (1994), in which it stated that a statute that did not explicitly seek to regulate interstate commerce but nonetheless did so "by its practical effect and design" was subject to heightened scrutiny. Id. at 394. We have since explicitly found that under Carbone and its progeny, "either purpose or effect will trigger strict scrutiny analysis." Harvey & Harvey, 68 F.3d at 798.

at 1231; Norfolk S. Corp. v. Oberly, 822 F.2d 388, 400 (3d Cir. 1987). If a regulation discriminates against interstate commerce on its face or in effect, then heightened scrutiny applies. See Cloverland-Green, 298 F.3d at 210-11; Harvey & Harvey, 68 F.3d at 797. Under the heightened scrutiny standard, the State must demonstrate 1) that the statute serves a legitimate local interest, and 2) that this purpose could not be served as well by available non-discriminatory means. See Cloverland-Green, 298 F.3d at 210-11; Harvey & Harvey, 68 F.3d at 797. If the statute at issue does not discriminate against interstate commerce, it is subjected to a balancing test whereby the statute must be upheld unless the burden imposed on interstate commerce is "clearly excessive in relation to the putative local benefits." Cloverland-Green, 298 F.3d at 211 (quoting Pike v. Bruce Church. Inc., 397 U.S. 137, 142 (1970)); Harvey & Harvey, 68 F.3d at 797. In Larson, however, we held that non-discriminatory highway safety statutes must be given a more deferential treatment, and may not be overturned absent a showing that the safety benefits are slight, problematic, or illusory. See Larson, 683 F.2d at 795.

We find the state officials' contention that all highway safety regulations are entitled to deferential treatment to be without merit. The state officials misinterpret Larson which explicitly limits its deferential standard to non-discriminatory highway safety regulations. Larson, 683 F.2d at 795. There is simply nothing in Larson that implies that the deferential standard adopted in Larson should be applied to discriminatory highway safety regulations. Moreover, in support of their argument, the state officials cite cases decided before C & A Carbone, Inc. v. Town of Clarkstown, 511 U.S. 383 (1994), in which the Supreme Court held that regulations that discriminate in effect and design are subject to the heightened scrutiny test. See 511 U.S. at 394; Harvey & Harvey, 68 F.3d at 798. Therefore, we agree with the District Court's conclusion that discriminatory highway safety regulations are subject to

heightened scrutiny.[3]

C. Whether the Regulations Are Discriminatory

At the summary judgment stage, when determining the appropriate level of scrutiny, the District Court found that the Regulations are not facially discriminatory.[4] Am. Trucking, 136 F. Supp. 2d at 350. The motion judge noted that the Regulations distinguish between trucks with and trucks without an origin or destination in New Jersey, but that the Regulations are not facially discriminatory because they "apply evenhandedly without regard to citizenship of the truck driver or owner." Id. Perhaps considering himself bound by the motion judge's ruling, the trial judge did not consider whether

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[3] The amicus curiae brief submitted by Tri-State Transportation Campaign also makes a general argument against the application of the heightened scrutiny test to regulations that are merely discriminatory in effect. (See Brief for Amicus Curiae Tri-State Transportation Campaign, Inc. ("Tri-State Brief") at 1-10.) It argues that there is a difference between a tolerable effect on interstate commerce and an impermissible burden, and that applying heightened scrutiny to a regulation with an effect on interstate commerce ignores this distinction. (Id. at 6-10.) This argument fails because the District Court, echoing Third Circuit and Supreme Court precedent, did not apply heightened scrutiny to the Regulations merely because they affect interstate commerce, but because they have a discriminatory effect.

[4] The question of whether a statute is discriminatory is a question of law, which this Court reviews de novo. See e.g., Atl. Coast Demolition & Recycling, Inc. v. Bd. of Chosen Freeholders of Atl. County, 112 F.3d 652, 663 (3d Cir. 1997); see also Nat'l Solid Wastes Mgmt. Ass'n v. Meyer, 63 F.3d 652, 656 (7th Cir. 1995).

the Regulations are facially discriminatory. We conclude that they are.

The Regulations state that their purpose is "to limit interstate through travel of large trucks," defining "interstate through travel" as "a trip with both an origin and destination outside of New Jersey." N.J. Admin. Code § 16:32-1.1. The Regulations achieve this purpose by mandating that restricted vehicles engaged "in interstate through travel may be operated in New Jersey only on the National Network," except as necessary to access food, fuel, rest, or repairs. N.J. Admin. Code § 16:32-1.4(a).

The text of the Regulations explicitly distinguishes out-of-state trucks that are passing through New Jersey and imposes additional burdens on these trucks. The Regulations deny trucks of out-of-state businesses that pass through New Jersey access to 3600 miles of New Jersey Network roads. These out-of-state trucks are only exempt from this restriction under limited circumstances -- namely, if they (sic) doing business in New Jersey that would require the dropping off or picking up of goods in New Jersey, or to access food, fuel, repairs, or rest. Meanwhile, trucks doing business in New Jersey are allowed unlimited access to the New Jersey Network. As was demonstrated at trial by the state officials' own expert and a New Jersey Department of Transportation study, forcing trucks that are passing through New Jersey to use only the National Network imposes increased costs on those trucks.[5] (Appendix ("App.") at Da491; Plaintiffs' Supplemental Appendix ("Supp. App.") at Pa16-Pa22, Pa52-Pa57.) By

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[5] For example, the New Jersey Department of Transportation study in evidence showed that the trip from Philadelphia to upstate New York was longer in distance and time, and costlier in tolls and fuel, when the driver was forced to use the National Network instead of the New Jersey Network. (App. at Da491; Supp. App. at Pa16-Pa22.)

granting trucks doing business in New Jersey unlimited access to the New Jersey Network while prohibiting trucks serving solely out-of-state interests from accessing the New Jersey Network, the Regulations explicitly impose costs on the citizens and businesses of other states while exempting New Jersey's own citizens and businesses from those same costs. For this reason, we find the Regulations facially discriminatory.

Our holding here is informed by the Supreme Court's reasoning in Granholm v. Heald, 125 S. Ct. 1885 (2005), in which the Supreme Court found unconstitutional New York statutes imposing additional burdens on out-of-state wineries seeking to ship wine directly to New York consumers.[6] In finding the statutes violated the dormant Commerce Clause, the Supreme Court noted that, "[t]ime and again this Court had held that, in all but the narrowest circumstances, state laws violate the Commerce Clause if they mandate 'differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.'" Id. at 1895 (quoting Oregon Waste Sys., Inc. v. Dep't of Envtl. Quality of Ore., 511 U.S. 93, 99 (1994)). Here, the Regulations explicitly provide for different treatment of in-state and out-of-state economic interests by limiting the access that the latter interest has to New Jersey roads. It is immaterial that a limited exception is allowed for out-of-state trucks with an origin or destination in New Jersey because, as in Granholm, "[t]he suggestion of a limited exception for [out-of-state economic interests] does nothing to eliminate the discriminatory nature" of the Regulations. Id. at 1896. The Regulations' explicit distinction and consequent burdening of out-of-state economic interests requires that heightened scrutiny be applied.

Also relevant here is the Supreme Court's decision in

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[6] In Granholm, the Supreme Court also invalidated on similar grounds Michigan statutes governing alcohol distribution. Granholm, 125 S. Ct. at 1896.

Philadelphia v. New Jersey, which held that a New Jersey law that bans the importation of most "solid waste or liquid waste which originated or was collected outside the territorial limits of the State" violated the Commerce Clause. 437 U.S. at 618. In City of Philadelphia, the Court observed that "[on] its face, [the New Jersey law] imposes on out-of-state commercial interests the full burden of conserving the State's remaining remaining landfill space." Id. at 628. According to the state, the purpose of the landfill law was to stem the "threat to the quality of the environment of New Jersey," to protect the State's diminishing landfill sites. The law was also enacted because "the public health, safety and welfare require that the treatment and disposal within this State of all wastes generated outside of the State be prohibited." Id. at 625. The Supreme Court held that the purpose of the law would not be relevant to whether the statute was discriminatory because:

[T]he evil of protectionism can reside in legislative means as well as legislative ends. Thus, it does not matter whether the ultimate aim of [the statute] is to reduce the waste disposal costs of New Jersey residents or to save remaining open lands from pollution, for we assume New Jersey has every right to protect its residents' pocketbooks as well as their environment. And it may be assumed as well that New Jersey may pursue those ends by slowing the flow of all waste into the State's remaining landfills. . . . But whatever New Jersey's ultimate purpose, it may not be accomplished by discriminating against articles of commerce coming from outside the State unless there is some reason, apart from their origin, to treat them differently. Both on its face and in its plain effect, [the statute in question] violates this principle of nondiscrimination.

Id. at 626-27.

Similarly, here, the Regulations, on their face, violate this notion of nondiscrimination.

Our holding also parallels our reasoning in Old Coach, in

which we held that New Jersey laws providing for separate regulatory schemes for New Jersey land sales to New Jersey residents and for out-of-state land sales to New Jersey residents, imposing tighter and costlier restrictions on the latter, were discriminatory on their face. 881 F.2d at 1232. Like the Regulations here, the statutes at issue in Old Coach did not distinguish between businesses based on citizenship. Id. Regardless, the statutes in Old Coach were facially discriminatory because they explicitly imposed additional costs on interstate land sales that intrastate land sales were not subject to. Id. Similarly, by limiting the access that out-of state trucks have to the New Jersey Network to only circumstances in which they have an origin or destination in New Jersey, while allowing New Jersey trucks unlimited access to the same network, the Regulations on their face impose additional costs on out-of-state economic interests that New Jersey economic interests are not required to bear.

Even if we were to find, as the District Court did, that the Regulations are not facially discriminatory, we agree with the District Court that the Regulations are discriminatory in effect. In finding that the Regulations have a negative impact on interstate commerce, the District Court gave a well-reasoned analysis of the facts in evidence and concluded that, based on a New Jersey Department of Transportation study, many truckers involved in interstate commerce with no origin or destination in New Jersey would be forced to take longer and costlier routes when forced to use the National Network rather than the New Jersey Network. Am. Trucking, 2004 WL 601659, at *5-6. Commercial interests which rely on imports from and exports to New Jersey are not subject to these increased costs. The District Court properly rejected Spasovic's conclusion that the Regulations would have a positive net economic impact on interstate trucking despite these added costs because it found no support for the assumption that truckers choose to act against their economic interest. As the District Court concluded, truck drivers act in their economic interest, and that interest is best served by their using the New

Jersey Network as opposed to the National Network when doing so results in a net gain of time and money. In these circumstances, the Regulations barring from the New Jersey Network interstate trucks with no origin or destination in New Jersey produce a negative, not a positive, impact on interstate commerce.

Moreover, the District Court's conclusion is consistent with Supreme Court precedent stating that statutes that increase out-of-state competitors' costs are subject to heightened scrutiny under the Commerce Clause. In Carbone, the Supreme Court found that an ordinance requiring that solid waste processed or handled within the town be processed or handled at the town's transfer station was discriminatory in effect and thus subject to heightened scrutiny. Carbone, 511 U.S. at 392. The Supreme Court determined that, although the ordinance's immediate effect was to direct local transport of solid waste to a designated site within the local jurisdiction, its economic effects were "interstate in reach" because, among other things, the requirements of the ordinance had the effect of driving up the cost for out-of-state interests to dispose of their solid waste. Carbone, 511 U.S. at 389. In American Trucking Ass'ns, Inc. v. Scheiner, 483 U.S. 266 (1987), the Supreme Court invalidated a state's flat tax levied on all trucks that used its roads because data showed that the fees imposed a cost per mile on interstate trucks that was nearly five times as heavy as the cost borne by local trucks, and did "not even purport to approximate fairly the cost or value of the use of Pennsylvania's roads." See Scheiner, 483 U.S. at 284-86, 290. In these cases, the Supreme Court interpreted the dormant Commerce Clause to invalidate "local laws that impose commercial barriers or discriminate against an article of commerce by reason of its origin or destination out of state." Carbone, 511 U.S. at 390; see also Am. Trucking Ass'ns. Inc. v. Mich. Pub. Serv. Comm'n, 125 S.Ct. 2419, 2423 (2005); Scheiner, 483 U.S. at 284. This is precisely what the Regulations do by discriminating against trucking services by reason of their out-of-state origin and destination.

Because the Regulations are discriminatory both on their face and in effect, the District Court did not err in applying heightened scrutiny.

D. The Availability of Nondiscriminatory Alternatives

The state officials argue that, even if heightened scrutiny is appropriate, the District Court erred in finding that there is an available non-discriminatory alternative to the Regulations that would accomplish the goal of improving highway safety by reducing the number of restricted vehicles on the New Jersey Network. We review the District Court's finding of an available non-discriminatory alternative for clear error. See Atl. Coast, 112 F.3d at 663, 665.

The District Court found that a non-discriminatory alterative was available in the form of a regulation that would prohibit all trucks, regardless of origin or destination, from using the New Jersey Network except as needed to reach the National Network from a New Jersey origin, to reach a New Jersey destination from the National Network, or to access food, rest, fuel, or repairs. Am. Trucking, 2004 WL 601659, at *6-7. The state officials argue that this alternative would be impossible to enforce because: 1) it would require police to stop restricted vehicles on the New Jersey Network randomly to determine compliance with the statute, and 2) such a determination would require the officer making the stop to make difficult calculations regarding whether the truck needed to be on that road to reach a specific New Jersey destination from the National Network or to access the National Network from a New Jersey origin.

It was not clear error for the District Court to reject this argument and to find that a non-discriminatory alternative was available. Both the Regulations and the non-discriminatory alternative would require that the police randomly stop trucks on the New Jersey Network to ensure compliance with the applicable law. Moreover, as the District Court noted, the

police are regularly entrusted with the responsibility to make complex determinations when stopping a vehicle to ensure compliance with the law, such as the "nuanced determinations" inherent in finding probable cause or the calculations necessary for the enforcement of similar needs-based exemptions to other highway regulations. Id. The Regulations themselves would have involved such determinations in order to allow interstate trucks to leave the National Network to the extent necessary for fuel, food, rest, or repairs.

The District Court's conclusion that a non-discriminatory alternative was available was based on solid reasoning and grounded in the evidence. This is a far cry from clear error, in which a district court's finding is "completely devoid of minimum evidentiary support displaying some hue of credibility" or bears "no rational relationship to the supporting evidentiary data." Universal Minerals, Inc. v. C.A. Hughes & Co., 669 F.2d 98, 104 (3d Cir. 1981) (quotation marks and citation omitted.). We therefore affirm the District Court's determination that the Regulations do not survive heightened scrutiny.

IV. Conclusion

For the reasons stated above, we affirm the District Court's decision holding that the Regulations violate the Commerce Clause of the United States Constitution and its decision to enjoin enforcement of the Regulations.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-2201

AMERICAN TRUCKING ASSOCIATIONS, INC. and US XPRESS, INC.,

Petitioners

v.

CHRISTINE TODD WHITMAN, in her official capacity as the Governor of the State of New Jersey; JAMES WEINSTEIN, in his official capacity as the Commissioner of the New Jersey Department of Transportation; COL. CARSON DUNBAR, in his official capacity as the Superintendent of the New Jersey State Police; JOHN J. FARMER, JR., in his official capacity as the Attorney General of the State of New Jersey,

Respondents

On Appeal from the United States District Court for the
UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY
00-489
District Judge: Honorable Stanley R. Chesler

Argued September 26, 2005

Before: RENDELL, FUENTES, and GARTH,
Circuit Judges.

JUDGMENT

This cause came on to be considered on the record from the UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY and was argued on September 26, 2005.

On consideration whereof, it is now hereby ADJUDGED and ORDERED that the judgment of the district court entered March 24, 2004, be and the same is hereby affirmed.

ATTEST:

/s/ Marcia Waldron
Clerk

DATED: February 17, 2006

Certified as a true Copy and issued in lieu of a formal mandate on 4/7/06

Teste: /s/ Marcia M. Waldron
Clerk, U.S. Court of Appeals for the
Third Circuit

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-2201

AMERICAN TRUCKING ASSOCIATIONS, INC.
and US XPRESS, INC.,
Appellees

v.

CHRISTINE TODD WHITMAN, in her official capacity as the Governor of the State of New Jersey; JAMES WEINSTEIN, in his official capacity as the Commissioner of the New Jersey Department of Transportation; COL. CARSON DUNBAR, in his official capacity as the Superintendent of the New Jersey State Police; JOHN J. FARMER, JR., in his official capacity as the Attorney General of the State of New Jersey,
Appellants

On Appeal from the United States District Court for the District of New Jersey
(D.C. No. 00-489)
District Judge: Honorable Stanley R. Chesler

Before: RENDELL, FUENTES, and GARTH,
Circuit Judges.

ORDER

The issuance of the mandate in this case will be stayed for a period of 45 days from the date of the filing of the Court's opinion.

/s/ Julio M. Fuentes
Circuit Judge

Dated: March 2, 2006
CLC\cc: Patrick DeAlmeida, Esq. Janine G. Bauer, Esq.
Trishka Waterbury, Esq. Robert S. Digges Jr., Esq.
Richard F. Ricci, Esq. Alix R. Rubin, Esq.

APPENDIX D

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Hon. Stanley R. Chesler,
U.S. District Judge

Civil Action No. 00-cv-489

AMERICAN TRUCKING ASSOCIATIONS, INC. and U.S. XPRESS, INC.,

Plaintiffs,

v.

CHRISTINE TODD WHITMAN, in her official capacity as Governor of the State of New Jersey; JAMES WEINSTEIN, in his official capacity as the Commissioner of the New Jersey Department of Transportation; COL. CARSON DUNBAR, in his official capacity as the Superintendent of the New Jersey State Police; and JOHN J. FARMER, JR., in his official capacity as the Attorney General of the State of New Jersey,

Defendants.

ORDER

CHESLER, U.S. District Court Judge

This matter having come to trial before the Court; the issues having been heard and a decision having been rendered:

It is on this 24th day of March, for the reasons set forth in this Court's Opinion of March 24, 2004;

ORDERED and ADJUDGED that Judgment shall be entered as follows:

In favor of Plaintiffs American Trucking Associations, Inc. and U.S. Xpress and against Defendants Christine Todd Whitman, et al., and Defendants are permanently enjoined from enforcing the New Jersey Highway Safety Regulations at issue in this matter, codified at N.J.A.C. 16:32-1.1 - 16:32-1.6; and it is further,

ORDERED that this injunction is stayed pending the resolution of any timely filed appeal.

s\
Stanley R. Chesler,
U.S. District Judge

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Hon. Stanley R. Chesler
U.S. District Judge

Civil Action No. 00-cv-489

AMERICAN TRUCKING ASSOCIATIONS, INC. and U.S. XPRESS, INC.,

Plaintiffs,

v.

CHRISTINE TODD WHITMAN, in her official capacity as Governor of the State of New Jersey; JAMES WEINSTEIN, in his official capacity as the Commissioner of the New Jersey Department of Transportation; COL. CARSON DUNBAR, in his official capacity as the Superintendent of the New Jersey State Police; and JOHN J. FARMER, JR., in his official capacity as the Attorney General of the State of New Jersey,

Defendants.

OPINION

CHESLER, U.S. District Court Judge

This case requires this Court to enter the realm of the dormant Commerce Clause of the United States Constitution (U.S. Const. Art. I, § 8) as it relates to and impacts State highway safety regulations. Plaintiffs, American Trucking Associations, Inc. ("ATA") and U.S. Xpress ("USX") bring this

civil action against Defendants Christine Todd Whitmann, in her official capacity as Governor of the State of New Jersey; James Weinstein, in his official capacity as the Commissioner of the New Jersey Department of Transportation ("NJDOT"); Col. Carson - Dunbar, in his official capacity as the Superintendent of the New Jersey State Police; and John J. Farmer, Jr., in his official capacity as the Attorney General of the State of New Jersey. Plaintiffs allege that certain New Jersey Highway Regulations codified at N.J.A.C. 16:32-1.1 - 16:32-1.6[1] discriminate against

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[1] The sections of the regulations at issue:

N.J.A.C. 16:32-1.1 Purpose
The New Jersey Department of Transportation has determined that it is in New Jersey's best interest to limit interstate through travel of large trucks to the National Network, the NJ Turnpike, and the Atlantic City Expressway. Large trucks restricted herein include 102 inch wide standard trucks and double trailer truck combinations. Interstate through travel for the purposes of this chapter shall be travel with both an origin and destination outside of New Jersey. Reasonable access shall be permitted to terminals and facilities for food, fuel, repairs, and rest.

N.J.A.C. 16:32-1.2 Definitions
The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicated otherwise.

> "Double-trailer truck combination" means a truck-tractor-semitrailer-trailer combination, and which meets the equipment length requirement as set forth in N.J.S.A. 39:3-84 and 23

CFR 658.13. . . .

"Interstate through travel" means those trips with neither an origin nor destination in New Jersey.

"Intrastate through travel" means those trips with an origin and/or a destination in New Jersey.

"102-inch wide standard truck" means a truck greater than 96 inches but not greater than 102 inches in width, exclusive of mirrors and other safety devices, and which meets the equipment length requirements as set forth in N.J.S.A. 39:3-84(3) and (4), as amended. "Terminal" means any location where freight originates, terminates, or is handled in the transportation process and, when services by twin trailers, includes sufficient off-set area for ingress, egress, drop off or pick up and maneuvering of twin trailer combinations. Additionally a motor carrier operating facility, a distribution center, or a rail, waterborne, or air terminal shall be considered the same as a terminal.

N.J.A.C. 16:32-1-3 General Provisions
(a) Double-trailer truck combination and 102-inch

wide standard trucks are permitted to operate in New Jersey only to the extent and under the conditions authorized by the rules in this chapter.
(b) For purposes of clarity, these rules do not supersede other State regulations outside of this chapter, municipal ordinances and county resolutions which may otherwise restrict or control movements of trucks or other vehicles. An example of such a restriction is a maximum weight posting.
(c) The maximum width permitted on the routes designated in N.J.A.C. 16:32-1.4 and 1.6(c)is 102 inches, exclusive or mirrors and other safety devices.

N.J.A.C. 16:32-1.4 Designated interstate through travel routes for double-trailer truck combinations and large 102-inch wide standard trucks (National Network)
(a) Except as provided in N.J.A.C. 16:32-1.6, Reasonable acess to terminals and other facilities, double-trailer truck combinations and 102-inch wide standard trucks in interstate through travel may be operated in New Jersey only on the National Network as designated in CFR Part 658 in addition to the New Jersey Turnpike, and the Atlantic City Expressway. The roads that may be used for interstate travel are listed below and are hereinafter referred to as the "National Network": . . .

N.J.A.C. 16:32-1.5 Designated intrastate access travel routes (NJ Access Network)
(a) The following routes are designated as intrastate access travel routes for 102-inch wide standard trucks and double-trailer truck combinations for access to

terminals, business, pickups, and deliveries. 102-inch wide standard trucks and double-trailer truck combinations may travel freely for these purposes on these routes hereinafter referred to as the "NJ Access Network":

(1) All state routes with the exception of those listed under Appendix A, incorporated herein by reference, approximately 1,812 miles;
(2) Al county "500" series roads with the exception of those listed under Appendix B, incorporated herein by reference, approximately 1,734 miles;
(3) Those county "600" series roads listed under Appendix C, incorporated herein by reference, approximately 80 miles; and
(4) The New Jersey Turnpike, the Atlantic City Expressway and the Garden State Parkway south of Exit 105. Use of these routes is subject to the regulation of the New Jersey Turnpike Authority, the South Jersey Transportation Authority and the New Jersey Highway Authority, respectively. . . .

(c) Designation of any route in this chapter as an intrastate access travel route for 102-inch wide standard trucks is a designation which pertains to permissible widths only. Such designation does not always guarantee free movement of all 102-inch wide standard vehicles. Some 102-inch wide standard vehicle movements may be restricted on a route

because of route or bridge weight restrictions and/or vertical clearance restrictions.
(d) 102-inch wide standard trucks may be permitted to detour off the authorized routes only to the extent necessary to bypass road closings, and route restrictions such as weight or vertical clearance limits. 102-inch wide standard trucks shall return to the designated network as soon as practicable during a detour movement.
(e) Notwithstanding any other provisions of this chapter, wide standard trucks in intrastate access travel shall enter and exit the State only on those specific routes designated for 102-inch standard trucks as authorized in this section and N.J.A.C. 16:32-1.4.

N.J.A.C. 16:32-1.6 Reasonable access to terminals and other facilities
(a) Any person or terminal operator seeking reasonable access for double-trailer truck combinations or other STAA authorized vehicles as defined in 23 CFR Part 658.5 and 658.13, or trucks wider than 96 inches but not more than 102 inches in width, from the system designated in N.J.A.C. 16:32-1.4, may do so by utilizing the route system as designated in N.J.A.C. 16:32-1.5, excluding the Garden State Parkway.
(b) Access from a designated route to a terminal should avoid areas considered residential as defined in N.J.A.C. 39:1-1 et seq.
(c) A double-trailer truck combination is permitted access from the system designated in N.J.A.C. 16:32-1.4 to facilities providing food, fuel, repairs

interstate commerce in purpose and effect by financially and otherwise burdening certain categories of commercial vehicles engaged in interstate commerce that pass through New Jersey, while failing to impose similar burdens on these categories of commercial vehicles engaged in intrastate commerce or in interstate commerce that also includes commerce with the state of New Jersey.

Based upon my findings of fact and conclusions of law as set forth below[2], I find that the New Jersey Highway

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> and rest within one mile roadway distance from the designated system except upon those roads, highways, streets, public alleys or other thoroughfares which cannot safely accommodate a double-trailer truck combination and are so designated by the Department.
> (d) Unless otherwise prohibited, 102-inch wide standard trucks are permitted to travel up to two roadway miles from any intrastate access travel route designated in N.J.A.C. 16:32-1.5 for purposes of pickup and delivery and for access to terminals and facilities providing food, fuel, repairs and rest, except upon those roads, highways, streets, public alleys or other public thoroughfares which cannot safely accommodate a truck wider than 96 inches and are so designated by the Department. Truck movements which are made under the authority of this subsection must conform to all other State regulations and to any local "truck route" restrictions which have been adopted and posted as provided in N.J.S.A. 40:67-16.1 et seq.

[2] Rule 52 of the Federal Rules of Civil Procedure provides, "in pertinent part, that in all actions tried upon the

Regulations in question impermissibly discriminate against interstate commerce, and, therefore, do violate the Commerce Clause of the United States Constitution. Accordingly, Defendants are permanently enjoined from enforcing the portions of the New Jersey Highway Regulations in question.

I. STATEMENT OF THE CASE AND PRELIMINARY EVIDENTIARY ISSUES

Plaintiffs ATA and USX filed their Complaint on January 31, 2000. Defendants filed their Answer on April 3, 2000.

Plaintiffs filed a Motion for Partial Summary Judgment on June 2, 2000, and Plaintiffs filed a Cross-motion for Summary Judgment on September 15, 2000. On March 22, 2001, the Honorable Mary L. Cooper issued a Memorandum Opinion and Order denying both Plaintiffs' and Defendants' Motions. After finding that the Regulations in question did not discriminate on their face (American Trucking Ass'ns v. Whitman, 136 F. Supp. 2d 343, 350), Judge Cooper concluded that a more fully developed record was needed to determine whether the Regulations did indeed discriminate in effect by imposing actual increases in travel time and expense on interstate truckers. American Trucking at 351. Moreover, while finding that ensuring the health and safety of its residents is a legitimate objective of the State, Judge Cooper found that a significant issue remained as to whether the State could prove that it lacks an alternative, non-discriminatory means for achieving the Regulation's asserted purpose. American Trucking at 351-352.[3]

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facts without a jury or with an advisory jury, the court shall find the facts specifically and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58. . . ." Fed. R. Civ. P. 52(a).

[3] This point being an issue only upon the determination that the regulations are discriminatory in

This Court then conducted a four day bench trial, beginning September 10, 2003.

II. FINDINGS OF FACT

A. PARTIES AND JURISDICTION

1. Plaintiff, American Trucking Associations, Inc. ("ATA"), is a national non-profit trucking trade association representing over 2,000 member corporations, partnerships and individual owner-operators. (Stipulated Facts.)[4] ATA, a 501-C6 non-profit District of Columbia Corporation, is suing on behalf of its members. (Stipulated Facts).

2. Plaintiff, U.S. Xpress ("USX") is an interstate motor carrier incorporated in Nevada and based in Tennessee. (Stipulated Facts). USX regularly engages in interstate commerce in New Jersey using commercial vehicles categorized as restricted under the Regulations, that is double-trailer truck combinations and 102-inch-wide standard truck tractor semi-trailers. (Stipulated Facts). USX employs roughly 7,000 drivers and contracts with an additional 1,000 owner-operators. (Trial Trans. 36, 38, 44).

3. Defendant Christine Todd Whitman was a resident of the State and the Governor of the State at the time of the filing of the Complaint (Complaint, ¶ 4, January 31, 2000 and Answer, ¶ 7, February 3, 2000).

4. Defendant James Weinstein was a resident of the State and the Commissioner of the NJDOT at the time of the filing of the Complaint. (Complaint, ¶ 5, January 31, 2000 and Answer,

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impact or effect.

[4] Stipulated Facts are found in Section 3 of the Revised Final Pretrial Order.

¶ 7, February 3, 2000).

5. Defendant John J. Farmer, Jr. was a resident of the State and the Attorney General of the State at the time of the filing of the Complaint. (Complaint, ¶ 6, January 31, 2000 and Answer, ¶ 7, February 3, 2000).

6. Defendant Col. Carson Dunbar was a resident of the State and the Superintendent of the State Police at the time of the filing of the Complaint. (Complaint, ¶ 7, January 31, 2000 and Answer, ¶ 7, February 3, 2000).

7. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 which provides that "the district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

B. THE REGULATIONS

8. On or about July 16, 1999, the NJDOT enacted emergency regulations that addressed the use of certain New Jersey roads by certain categories of commercial carriers. (Stipulated Facts).

9. The emergency regulations were adopted as final regulations ("Regulations") effective September 15, 1999. (Stipulated Facts).

10. Double-trailer truck combinations and 102-inch wide standard truck semi-trailers engaged in interstate commerce not involving New Jersey ("Restricted Vehicles") constitute the category of vehicle impacted by the regulations. (N.J.A.C. 16:32-1.3).

11. Under the Regulations, Restricted Vehicles traveling through the State with neither an origin nor a destination in the State must stay on routes designated for interstate travel in 23 C.F.R. part 658 and a limited number of other routes as

designated by N.J.A.C. 16:32-1.4(a) (the "National Network").

12. The National Network consists of 545.7 miles of road in New Jersey, including sections of I-76, I-78, I-80, I-95, I-278, I-280, I-287, I-295, I-676, NJ 42, NJ 81, US 130, US 322, NJ 440, the New Jersey Turnpike, and the Atlantic City Expressway. (Ex. P-11, N.J.A.C. 16:32-1.4 (a)).

13. Restricted vehicles may deviate onto other roads only to access terminals and for limited distances to get food, fuel, truck repairs, and rest. (N.J.A.C. 16:32-1.4; N.J.A.C. 16:32-1.6).

14. Double-trailer truck combinations and 102-inch wide standard truck semi-trailers that are engaged in purely intrastate commerce or in interstate commerce that includes an origin or destination in New Jersey are exempted from the restrictions of the Regulations and are able to use the National Network as well as the New Jersey Access Network. (N.J.A.C. 16:32-1.5; Ex. P-51 Thatcher Deposition, Trans. 61:11-13).

15. The New Jersey Access Network consists of approximately 3,600 miles of road in addition to the 545.7 miles of road comprising the National Network. (Ex. P-11, N.J.A.C. 16:32-1.5(a)).

16. A vehicle otherwise matching the definition of a Restricted Vehicle but that is engaged in purely intrastate commerce or interstate commerce involving an origin or destination in New Jersey may use the New Jersey Access Network for any portion of its trip, not merely the portion required to reach a particular point of origin or destination. (Ex. P-51, Thatcher Deposition, Trans. 61:11-13). This means that such a vehicle with a delivery in the northern most portion of the State may use even those roads in the New Jersey Access Network that run only through the Southern most portion of the State. (Trial Trans. 64:24-65:6; 91:20 - 92:1).

17. Penalties for violating the Regulations, effective on or about January 13, 2000, include a mandatory fine of not more than $400 for the first violation; a mandatory fine of $700 for the second violation; and a mandatory fine of $1,000 for each subsequent violation. (Ex. P-6; N.J.S.A. 39:3-84.3; Stipulated Facts).

18. The asserted purpose of the New Jersey Highway Regulations is to reduce the volume of large trucks on the non-National Network highways in order to protect the health, safety and welfare of New Jersey residents. (Ex. P-1, N.J.A.C. 16:32-1.4(c)and 1.5(e)).

19. Some of the non-interstate highways that make up the New Jersey Access Network are divided, with wide pavements, while others are undivided two-lane roads with intersections and points of access to businesses and residences. (Trans. 440:7-20).

20. Truck traffic in New Jersey rose by 1.5 billion vehicle miles traveled between 1991 and 1998. (Ex. D-17.) There were approximately 20,000 accidents involving trucks in New Jersey in 1997, with an increase of between 5-10% in 1998. (Trial Trans. 616:6-12). Truck accident rates are approximately twice as high on state and county highways (likely to be part of the New Jersey Access Network) than on Interstate Highways (likely to be part of the National Network). (Trial Trans. 619:15-19, Ex. D-30).

21. Studies reveal that prior to enactment of the Regulations, a significant number of large trucks traveling on non-interstate highways, as many as 25% on some routes, had no destination or origin in New Jersey. (Id.).

22. NJDOT anticipated that diverting trucks passing through New Jersey from the New Jersey Access Network to National Network roads would alleviate congestion and safety concerns on the former without creating additional burdens on

the latter. (Trial Trans. 450:21-451:12).

C. IMPACT OF THE REGULATIONS

1. Financial Impact

23. According to the NJDOT, the Regulations "may have a negative impact on those truckers and shippers [not doing business in the State], since it may take longer to arrive at their destinations, thus making it more costly, or it could cost more in tolls compared to parallel routes," but the regulations "should not have a negative economic impact on New Jersey's economy." (Ex. P-1, 31 N.J.R. 2258; Stipulated Fact).

24. A time/distance study performed by the NJDOT after the Regulations were adopted as final found that a round trip from Philadelphia to upstate New York and from New York back to Philadelphia was 56.36 miles longer on the National Network than on the New Jersey Access Network, took 18.13 minutes longer, and costs an additional $44.36 in tolls. (Ex. J-1; Trial Trans. 136-142).

25. When choosing routes to travel, reasonably prudent truckers act in accordance with their economic interests. (Stipulated Facts).

26. USX is unable to quantify the costs it incurs as a result of the Regulations. (Trial Trans. 91-92).

27. Plaintiffs' experts predict that preventing Restricted Vehicles from using the National Network burdens these vehicles in terms of tolls, travel time delay, and increased operating costs with a total conservative cost impact of $19.64 million per year. (Trial Trans. 380-81, 383).

28. Plaintiffs' transportation expert, Professor Kornhauser, is the creator of a computer software program, PC Miler, which is widely used in the trucking industry to compute best possible

routes. (Trial Trans. 110).

29. PC Miler assigns mathematical values to account for distance, road class (which stands in for travel time) and tolls in predicting which is the most desirable route to travel between a given origin and destination. (Trial Trans. 115-121).

30. The Commodity Flow Survey ("CFS")is currently the best available representation of the volume of truck traffic and the movement of goods in the United States. (Trial Trans. 145-146). The CFS provides data on a state-by-state basis.

31. In order to analyze the impact of the Regulations, Professor Kornhauser disaggregated the CFS data down to a county level based on population. (Trial Trans. 147-149). He made assumptions about the number of trucks needed to carry this disaggregated flow of goods. (Trial Trans. 149-150). Professor Kornhauser then used a version of PC Miler to propose and then compare possible routes taken by these Restricted Vehicles under pre and post-Regulation conditions. (Trial Trans. 143).

32. Mr. Labbe, an economic consultant, then used the 1997 Vehicles Inventory and Use Survey to calculate the probable percentage of trucks matching the definition of a Restricted Vehicle that would be carrying the goods identified by the CFS and disaggregated by Professor Kornhauser, in order to arrive at a more accurate picture of the economic impact of the Regulations. (Trial Trans. 345-350; 356-359).

33. Calibration of a model, such as Professor Kornhauser's, requires checking and verifying the accuracy of the model as to its prediction of average travel distances and lengths. (Trial Trans. 639:14-639:25). Validation of a truck transportation model includes checking to ensure that the routes to which the model is assigning trucks are confirmed by observation of actual trucks on the assigned routes. (Trial Trans. 640:4-640:9).

34. Many of Professor Kornhauser's predictions are not supported by real-world observations. This Court will offer just one example. Professor Kornhauser's model predicts that approximately 1.4 million trucks per year are diverted by the Regulations from Route 17 to I-87. Truck traffic on Route 17 tends to cross the George Washington Bridge. After the enactment of the Regulations, no decrease in truck crossing at the George Washington Bridge, nor an increase at the Tappan Zee Bridge (where I-87 traffic would cross the Hudson) was observed. (Trial Trans. 276:9-277.25; 666:11-667:10; D-35).

35. This Court finds that it need not further investigate the flaws in Plaintiffs' presentation as it can rely, in part, on Defendants' presentation.

36. Defendants' expert, Dr. Spasovic, in contrast to Professor Kornhauser, bases his analysis on actual traffic volume data. (Trial Trans. 555:25-558:21; J-2). Dr. Spasovic obtained traffic volume data from the NJDOT and the New Jersey Turnpike Authority. (Trial Trans. 551:11-551:22). The NJDOT has Weigh-in-Motion ("WIM") sites located on several of its highways. (Trial Trans. 519:17-522:2).

37. Based on WIM data showing truck flows through New Jersey, Dr. Spasovic established that the section of NJ 31/US 202 between I-95 and I-287 would be most heavily impacted by the truck route regulation. (Trial Trans. 555:25-558:21; J-2). This section of road showed a decrease in two-way truck volume of approximately 700 vehicles per day between 1998 (prior to enactment of the Regulations) and 2001 (following the enactment of the Regulations), with a parallel section of the New Jersey Turnpike showing an increase over that same period of greater than 700 vehicles per day. (Id.). The evidence circumstantially establishes that 700 vehicles per day were diverted from the NJ 31/US 202 as a result of the operation of the Regulations.

38. Dr. Spasovic analyzed the financial impact of these 700

trucks by allocating 266 of them to a hypothetical Philadelphia, Delaware South/Upstate New York market route based on Commodity Flow Survey information. (Tr. Trans. 717-718). He calculated that a Regulation-induced diversion of these 266 trucks computed on an annual basis would equal between $1,333,000 when based on a mileage/hourly analysis and $4,434,000 when based on a mileage analysis. (Id.).

39. Dr. Spasovic allocates the remaining 434 of these 700 trucks to two other market routes and argues that the savings in tolls that results from use of the New Jersey Access Network is nullified or outweighed by the additional miles and travel time associated with use of those roads. (Trial Trans. 581, 583, 754). Essentially Dr. Spasovic argues that truckers interested in minimizing costs should have been using the National Network all along. (Trial Trans. 743-744, 721).

40. The Court is underwhelmed by this aspect of Dr. Spasovic's argument. Because in part it has been stipulated that reasonably prudent truckers, when choosing routes to travel, act in accordance with their economic interests, this Court finds that the trucking companies or owner-operators behind these 700 trucks were operating in their economic interests by using this portion of the New Jersey Access Network, and were burdened by having to chose different routes as required by the Regulations.[5]

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[5] Plaintiffs' experts argue that if Dr. Spasovic had considered the economic impact on all 700 trucks diverted from NJ 31 due to the Regulations, and not just the 266 that he allocated to a hypothetical Philadelphia, Delaware South/Upstate New York market route, the economic impact would be much larger -- approximately $3.5 million in annual costs when computed on a mileage/hourly basis, or $10.8 million in annual costs when computed on a mileage basis.

41. In any case, even assuming that the Regulations do result in a net positive economic impact by forcing truckers to choose more efficient routes (routes that were available to them, but unused prior to enactment of the Regulations), this does not nullify the marginal impact of the Regulations. By Defendants' own concession, the Regulations forced a substantial number of truckers engaged in interstate commerce to engage in conduct counter to their economic interests.

42. Dr. Spasovic acknowledged that diversions from other parts of the New Jersey Access Network were caused by the Regulations, albeit in smaller volumes than on NJ 31, but he did not attempt to determine the financial impact of these other diversions. (Trial Trans. 698).

43. Relying solely on Defendants' expert testimony as developed on direct and cross examination, at minimum, the Regulations in question result in an aggregate negative economic impact on those carriers engaged in purely interstate commerce of between $1,333,000 and $4,434,000.

2. Safety Impact

44. Had the Regulations been in effect, Dr. Spasovic calculated and the Court finds, there would have been 12 fewer truck accidents in New Jersey in 1997 and nine fewer in 1998. (Trial Trans. 628).

45. A comparison of actual truck accident data in New Jersey before and after enactment of the Regulations shows a reduction of 11 accidents a year. (Trial Trans. 630).

46. This evidence circumstantially establishes that the Regulations have improved the safety of New Jersey's roads by resulting in fewer truck accidents in New Jersey.

D. ALTERNATIVES TO THE REGULATIONS

47. In discussions prior to the enactment of the Regulations, Commissioner Weinstein opposed broadening the reach of the regulations to encompass all double trailer truck combinations and 102-inch wide truck semi-trailers, including those engaged in purely intrastate commerce or interstate commerce involving origins or destinations in New Jersey, on grounds that an expansion of the Regulations "would adversely impact New Jersey based business and the economic competitiveness of New Jersey based businesses." (Ex. P-4, 31 N.J.R. 2904; Trial Trans. 503-504; Stipulated Facts).

48. Defendants assert that restricting all double trailers and 102-inch wide trucks, including those engaged in only intrastate commerce and interstate commerce involving origins or destinations in New Jersey, from the New Jersey Access Network except to the extent necessary to reach or depart from a New Jersey location is impossible due to enforcement difficulties. (Trial Trans. 461-466). This Court is not convinced by the paucity of evidence offered by Defendants on this point.

49. State enforcement of the Regulations as currently written requires randomly stopping vehicles traveling on the restricted roads and checking truck manifests to determine whether the truck does indeed have an origin or destination somewhere in New Jersey. The only difference in enforcing an even-handed regulation is that the state enforcement official would have to determine whether a trucker with business in New Jersey was on a portion of road that he or she needed to be on in order to reach a New Jersey destination or to get back on the National Network in a way that was consistent with his or her next destination.[6]

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[6] This caveat ("consistent with his or her next destination") prevents the kind of back-tracking possibility that might result from requiring Restricted Vehicles to use

50. This Court finds as a matter of fact that the Regulations could require that Restricted Vehicles with business in the State use the New Jersey Access Network only as-needed to reach particular origins or destinations and to return to the National Network consistent with the vehicle's next destination point. Surely law enforcement officials, who are entrusted with the discretion to make nuanced determinations of probable cause, as just one example, would be capable of enforcing such a Regulation. (Trial Trans. 478-479). In fact, the State has seen fit to implement similar needs-based exemptions to other highway regulations, albeit on a smaller scale, but nevertheless suggesting a faith in law enforcement officials to make just the kind of determinations that the State claims would be unfeasible in this instance. (Ex. P-12, Regulat. Order No. WL-2000-01 and P-9, N.J.S.A. 39:4-197.18).[7] Moreover, there is nothing to prevent truckers from challenging citations under these Regulations, just as they might challenge citations for speeding or other traffic violations.

III. CONCLUSIONS OF LAW

51. For the reasons set forth below, I find that the Regulations impermissibly discriminate against interstate commerce and therefore violate the Commerce Clause.

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the absolute shortest route back to the National Network that could indeed place a higher burden on Restricted Vehicles with destinations in New Jersey.

[7] Trucks and truck-trailer combinations exceeding 26,000 lbs. are prohibited from using certain portions of State Highway 29. (Regulat. Order No. WL-2000-01). However, the regulation allows vehicles exceeding the weight limit, but that have an origin or destination on or within 3 miles of the prohibited sections of Highway 29 to use those sections. (N.J.S.A. 39:4-197.18).

52. This case is governed by the Commerce Clause of the United States Constitution, that provides that "Congress shall have Power . . . to regulate Commerce . . . among the several States." U.S. Const. Art. I, § 8. The doctrine of the negative or dormant Commerce Clause imposes an implied limitation on the regulatory power of the States, even in the absence of Congressional enactment. Kassel v. Con. Freightwavs Corp. of Delaware, 450 U.S. 662, 669 (1981) (citing Hunt v. Washington Apple Advertising Comm'n, 432 U.S. 333, 350 (1977)). The doctrine's focus is to protect interstate commerce by prohibiting economic protectionism on the part of the States. See Old Coach Dev. v. Tanzman, 881 F.2d 1227, 1231 (3d Cir. 1989); America Trucking Ass'ns v. Whitman, 136 F. Supp. 2d 343, 349 (Whitman") (citing Tolchin v. Supreme Court of New Jersey, 111 F. 3d 1099, 1106 (3d Cir. 1997)). When a State regulates too aggressively into interstate trade, an area which generally must remain free from interference by the States, the courts will hold the State regulation invalid under the Commerce Clause. See Kassel, 450 U.S. at 669.

53. There are some areas of particularly local concern where courts have been reluctant to invalidate state regulations. Kassel, 450 U.S. at 670. Historically, in no area of local concern has this deference to state regulation been greater than that of highway safety regulation. Am. Trucking Ass'ns v. Larson, 683 F. 2d 787, 790-791 (3d Cir. 1982)("Larson")(quoting Raymond Motor Transp. v. Rice, 434 U.S. 429, 443 (1978)) (citing South Carolina State Highway Dept. v. Barnwell Bros., Inc., 303 U.S. 177 (1938) and Bradley v. Public Util. Comm'n, 289 U.S. 92 (1933)).

54. This special deference to highway safety regulations derives in part from the assumption that the burdens of highway safety regulations, when not discriminatory, usually fall on local as well as leading to a built-in political check against passage of overly burdensome regulations. Raymond Motor, 434 U.S. at 444 (citing Barnwell Bros., at 182 and S. Pac. Co. v. Arizona ex rel. Sullivan, 325 U.S. 761, 783 (1945); see also Whitman,

136 F. Supp. 2d at 350 (citing Larson, 683 F . 2d 795) ("As long as the statute does not on its face or in fact discriminate against out-of-state interests or in favor of in-state interests, there is ample protection from such legislation in the democratic process itself.").

55. In recent cases, the Supreme Court has been openly split on the proper analysis to be applied when reviewing such highway safety regulations. Whitman, 136 F. Supp. 2d at 349 (citing Kassel, 450 U.S. at 662 (plurality opinion with some justices favoring and others rejecting a balancing approach) and Raymond Motor, 434 U.S. at 429 (articulating balancing approach)); see also Kassel at 690-691 (Rehnquist, J., dissenting) (articulating a higher level of deference).

56. The Third Circuit in Larson explicitly rejected the more lenient balancing approach and instead chose to apply a high level of deference to highway safety regulations. Larson, 683 F.2d at 790-795 (citing Kassel, 450 U.S. at 690-691 (Rehnquist, J., dissenting) (articulating the deferential standard).

57. This high level of deference, however, is due only those regulations that do not discriminate either on their face or in effect. Whitman, 136 F. Supp. 2d at 349-350 (citing Larson, 683 F.2d at 795 (finding that deferential standard should apply for evaluations of nondiscriminatory state regulations in the field of highway safety) and Norfolk S. Corp. v. Oberly, 882 F.2d 388, 405 (3d Cir. 1987) ("This court has applied a highly deferential standard in cases involving evenhanded highway safety regulations that do not create uniformity problems")).

58. A safety regulation that is discriminatory on its face or in effect, and therefore not entitled to a high level of deference, is examined under a heightened scrutiny standard and is struck down unless it is shown that the law serves a legitimate local purpose and that the purpose could not be served as well by available non-discriminatory means. Whitman, 136 F. Supp. 2d at 350.

A. REGULATIONS ARE NOT DISCRIMINATORY ON THEIR FACE

59. In reviewing the parties' motions for partial summary judgment, Judge Cooper held that the regulations do not discriminate on their face as they apply with equal force to all truck drivers and owners, without regard to the citizenship of the driver or owner. Whitman, 136 F. Supp. 2d at 350.[8]

60. However, "discrimination on the basis of citizenship is not the only-object of the Commerce Clause." Whitman, 136 F. Supp. at 348 (citing Old Coach, 881 F.2d at 1232).

B. REGULATIONS ARE DISCRIMINATORY IN EFFECT AND THUS NOT ENTITLED TO DEFERENTIAL REVIEW

61. A state regulation may also discriminate when its effect is to favor in-state economic interests over out-of-state interests. Whitman at 351 (quoting Brown-Forman Distillers v. New York State Liquor Auth., 476 U.S. 573, 579 (1986)). "The Supreme Court has found discrimination where the state regulation has an impact on interstate goods themselves." Id. (finding discrimination against interstate commerce where state statute imposed burdens on sellers of out-of-state land not imposed on sellers of New Jersey land, even where the statute applied evenhandedly without regard to the citizenship of the seller).

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[8] "While the regulations make a distinction between trucks with and without an origin or destination in New Jersey, on their face, the Regulations apply evenhandedly without regard to citizenship of the truck driver or owner. They restrict local road access based on the existence of an origin or destination in the state; this restriction applies with equal force to all truck drivers. The restriction on its face is a neutral one." Id.

62. Because the Regulations exempt those carriers engaged in purely intrastate commerce or interstate commerce involving New Jersey, enabling those carriers to operate at lower costs by avoiding toll roads, minimizing distances and/or choosing faster routes than those Restricted Vehicles passing through New Jersey to engage in commerce elsewhere, this Court is satisfied that the regulations discriminate in favor of in-state commerce and against commerce in other states.

63. While New Jersey certainly has the right to balance its safety concerns with its economic interests when crafting highway safety regulations, it is not permitted to do so on the back of interstate commerce. These Regulations benefit New Jersey residents by improving safety by decreasing congestion on the New Jersey Access Network. However, with the exemptions as currently written that ensure that trucking enterprises delivering or picking up shipments in New Jersey are able to use cheaper, shorter and toll-free roads throughout the entire state, the burden of the Regulations is felt only by out-of-state interests: those trucking enterprises that pass through the state to do business elsewhere, non-New Jersey businesses that will face higher trucking costs than their New Jersey counterparts, and non-New Jersey consumers who may face higher costs for goods as those higher trucking costs are passed on to them. See, e.g., Brown-Forman, 476 U.S. at 580 ("Economic protectionism is not limited to attempts to convey advantages to local merchants; it may include attempts to give local consumers an advantage over consumers in other states."); (Trial Trans. 61-63 (US Xpress absorbs increased costs or passes them onto its customer, the shipper)).

64. Exempting carriers engaged in intrastate commerce or interstate commerce involving New Jersey weakens the presumption in favor of the validity of highway safety regulations because it "undermine[s] the assumption that the State's own political processes will act as a check on local regulations that unduly burden interstate commerce." Raymond Motor, 434 U.S. at 446-447 (finding that the exemptions that

favor in-state interests lend force to the Court's conclusion that the Regulations cannot stand)[9]; see also Kassel, 450 U.S. at 675-676 ("Less deference to the legislative judgment is due, however, when the local regulation bears disproportionately on out-of-state residents and businesses."). The exemptions smack of a compromise between forces in the State that seek to limit congestion on New Jersey highways and forces within the State that complain that a more evenhanded general limit on use of the New Jersey Access Network would be unduly burdensome to in-state business. See, e.g., Kassel, 450 U.S. at 702 (Rehnquist, J, dissenting); (See also Ex. P-4, Commissioner Weinstein's comments).

65. Because of the aforementioned, the New Jersey Regulations are not entitled to application of the highly deferential review accorded highway safety regulations that are facially neutral and neutral in effect.

C. REGULATIONS ARE SUBJECT TO HEIGHTENED SCRUTINY

66. "A safety regulation that is discriminatory on its face or in effect, is examined under a heightened scrutiny and is struck down unless the proponent demonstrates that the law serves a legitimate local purpose and that this purpose could not be served as well by available non-discriminatory means."

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[9] In Raymond Motor, the regulations prohibited use of trucks longer than 55 feet on the state highways of Wisconsin, with exemptions for mobile homes and their towing vehicles, towed implements of husbandry, and tour trains. Additionally the State Highway Commissioner was authorized to issue permits to use oversize trucks to industries with inter-plant operations within the state as well as certain participants in the state's lumber, milk and auto industries. 434 U.S. 429 (1978).

Whitman, 136 F. Supp. 2d at 350.

67. For the following reasons, this Court concludes that the Regulations serve a legitimate local purpose.

1. Legitimate Local Purpose

68. The asserted purpose of the New Jersey Regulations is to reduce the volume of large trucks on the non-National Network highways in order to protect the health, safety and welfare of New Jersey residents. (Ex. P-1, N.J.A.C. 16:32-1.4(c)and 1.5 (e)).

69. The Supreme Court has found regulating interstate traffic to limit traffic volumes on certain roads to be permissible in some instances. 5 Bradley v. Pub. Util. Comm'n of Ohio, 289 U.S. 92 (1933) (upholding Highway Commission's denial of Plaintiff's application to operate as a common carrier over State Route 20 because the denial kept him off the road for reasons of safety and there was no suggestion that the classification of applicants operated to favor intrastate over interstate interests).

70. In other circumstances, however, the Supreme Court has found such attempts invalid. See, Kassel, 450 U.S. 662 (rejecting an attempt to reduce overall truck traffic on state highways by forcing large trucks to detour around the state).

71. The fact that prior to enactment of the Regulations, New Jersey had seen an increase in truck traffic of 1.5 billion vehicle miles, that there had been an increase in truck accidents of between a 5-10%, and that since enactment of the Regulations, there has been on average 11 fewer accidents per year[10] demonstrates the validity of the State's purpose in passing the Regulations. Moreover, the Court sees no evidence which convinces it that the stated purpose of the Regulations - of

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[10] All discussed in the Findings of Fact.

improving safety - is not the real reason for the enactment of the Regulations.

2. Available Nondiscriminatory Means

72. Judge Cooper concluded in the Summary Judgment phase of this case that the State's decision not to broaden the reach of the Regulations to include those trucks that were engaged in business with New Jersey does not go to whether the State's reason is permissible, but rather to whether the means employed to satisfy that purpose are the least discriminatory means available. Whitman, 136 F. Supp. 2d at 352 n.4. This Court agrees.

73. However, this Court concludes that the means chosen for effectuating the State's purpose were not predicated merely on feasibility. The Court cannot ignore that Commissioner Weinstein himself dismissed an available non-discriminatory means of achieving the State's purpose when he concluded that broadening the reach of the regulations to cover intrastate trucking "would adversely impact New Jersey based businesses and the economic competitiveness of New Jersey based businesses." (Ex. P-4, 31 N.J.R. 2904; Trial Trans. 503-504; Stipulated Facts.)

74. Moreover, because, as discussed in the Findings of Fact, this Court sees no reason why the State could not have passed a workable Regulation that more evenly restricted both carriers doing business outside of the State[11], as well as those doing business within the State, the Court concludes that there are available nondiscriminatory means by which the State can

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[11] This Court finds as a matter of fact (see ¶ 49) that the regulations could require that Restricted Vehicles with business Access Network only as needed to reach particular to return to the National Network consistent with the vehicle's next destination.

achieve its purported purpose of minimizing congestion and enhancing the safety of its citizens. Defendants have failed to bear their burden on this point.

75. Because this Court is satisfied that the State's purpose of decreasing congestion and improving safety on the New Jersey Access Route could be served by less discriminatory means, it finds that the New Jersey Regulations as written fail the heightened scrutiny analysis applied to discriminatory regulations under the dormant Commerce Clause. The Regulations, therefore, violate the Commerce Clause of the United States Constitution.

IV. CONCLUSION

Based upon the findings of fact and conclusions of law set forth above, this Court finds that the New Jersey Highway Regulations at issue discriminate against interstate commerce and in doing so violate the Commerce Clause of the U.S. Constitution. Accordingly, judgment shall be entered for the Plaintiffs and further enforcement of the Regulations shall be enjoined.

Dated: March 24, 2004

S\
Stanley R.Chesler
United States District Judge

FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CIVIL ACTION NO. 00-489 (MLC)

MEMORANDUM OPINION
DATED: MARCH 22, 2001

AMERICAN TRUCKING ASSOCIATIONS, INC. and US XPRESS, INC.,
Plaintiffs,

v.

CHRISTINE TODD WHITMAN, in her official capacity as Governor of the State of New Jersey; JAMES WEINSTEIN, in his official capacity as the Commissioner of the New Jersey Department of Transportation; COL. CARSON DUNBAR, in his official capacity as the Superintendent of the New Jersey State Police; and JOHN J. FARMER, JR., in his official capacity as the Attorney General of the State of New Jersey,

Defendants.

COOPER, District Judge

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This matter presents motions for partial summary judgment by both parties. We will deny the motions and develop a full evidentiary record before ruling further on the merits.

BACKGROUND

On or about July 16, 1999, the New Jersey Department of Transportation (the "Department") enacted "emergency regulations," which applied to certain commercial vehicles categorized as double-trailer truck combinations and 102-inch wide standard truck semi-trailers ("Restricted Vehicles"). Those regulations addressed the use of certain roads by Restricted Vehicles while traveling in the State of New Jersey (the "State"). (See Certification of Andrea B. Schwartz filed 10-16-00) ("Schwartz Certif.") Ex. A: Emergency Adoptions.) The emergency regulations were adopted as final regulations (the "Regulations") on August 2, 1999.[1]

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[1] The pertinent sections of the final regulations, as relevant to this dispute, provide:

> 16:32-1.1 Purpose
> The New Jersey Department of Transportation has determined that it is in New Jersey's best interest to limit interstate through travel of large trucks to the National Network, the NJ Turnpike, and the Atlantic City Expressway. Large trucks restricted herein include 102 inch wide standard trucks and double trailer truck combinations. Interstate through travel for the purposes of this chapter shall be travel with both an origin and destination outside of New Jersey. Reasonable access shall be permitted to terminals and to facilities for food, fuel, repairs, and rest.
>
> 16:32-1.2 Definitions
> The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.
> "Double-trailer truck combination" means a truck

tractor-semitrailer-trailer combination, and which meets the equipment length requirement as set forth in N.J.S.A. 39:3-84 and 23 CFR 658.13. . . .
"Interstate through travel" means those trips with neither an origin nor destination in New Jersey.
"Intrastate access travel" means those trips with an origin and/or a destination in New Jersey.
"102-inch wide standard truck" means a truck greater than 96 inches but not greater than 102 inches in width, exclusive of mirrors and other safety devices, and which meets the equipment length requirements as set forth in N.J.S.A. 39:3-84(3) and (4), as amended.
"Terminal" means any location where freight originates, terminates, or is handled in the transportation process and, when serviced by twin trailers, includes sufficient off-street area for ingress, egress, drop off or pick up and maneuvering of twin trailer combinations. Additionally, a motor carrier operating facility, a distribution center, or a rail, waterborne, or air terminal shall be considered the same as a terminal.

16:32-1.3 General provisions
(a) Double-trailer truck combinations and 102-inch wide standard trucks are permitted to operate in New Jersey only to the extent and under the conditions authorized by the rules in this chapter.
(b) For purposes of clarity, these rules do not supersede other State regulations outside of this chapter, municipal ordinances and county resolutions which may otherwise restrict or control the movements of trucks or other vehicles. An example

of such a restriction is a maximum weight posting.
(c) The maximum width permitted on the routes designated in N.J.A.C. 16:32-1.4 and 1.6(c) is 102 inches, exclusive of mirrors and other safety devices.

1.6:32-1.4 Designated interstate through travel routes for double-trailer truck combinations and large 102-inch wide standard trucks (National Network)
(a) Except as provided in N.J.A.C. 16:32-1.6, Reasonable access to terminals and other facilities, double-trailer truck combinations and 102-inch wide standard trucks in interstate through travel may be operated in New Jersey only on the National Network as designated in 23 CFR Part 658 in addition to the New Jersey Turnpike, and the Atlantic City Expressway. The roads that may be used for interstate through travel are listed below and are hereinafter referred to as the "National Network": . . .

16:32-1.5 Designated intrastate access travel routes (NJ Access Network)
(a) The following routes are designated as intrastate access travel routes for 102-inch wide standard trucks and double-trailer truck combinations for access to terminals, businesses, pickups, and deliveries. 102-inch wide standard trucks and double-trailer truck combinations may travel freely for these purposes an these routes hereinafter referred to as the "NJ Access Network":
1. All State routes with the exception of those listed under Appendix A, incorporated herein by reference, approximately 1,812 miles;
2. All county "500" series roads with the exception

of those listed under Appendix B, incorporated herein by reference, approximately 1,734 miles;

3. Those county "600" series roads listed under Appendix C, incorporated herein by reference, approximately 80 miles; and

4. The New Jersey Turnpike, the Atlantic City Expressway and the Garden State Parkway south of Exit 105. Use of these routes is subject to the regulation of the New Jersey Turnpike Authority, the South Jersey Transportation Authority and the New Jersey Highway Authority, respectively.

(c) Designation of any route in this chapter as an intrastate access travel route for 102-inch wide standard trucks is a designation which pertains to permissible widths only. Such designation does not always guarantee free movement of all 102-inch wide standard vehicles. Some 102-inch wide standard vehicle movements may be restricted on a route because of route or bridge weight restrictions and/or vertical clearance restrictions.

(d) 102-inch wide standard trucks may be permitted to detour off the authorized routes only to the extent necessary to bypass road closings, and route restrictions such as weight or vertical clearance limits. 102-inch wide standard trucks shall return to the designated network as soon as practicable during a detour movement.

(e) Notwithstanding any other provisions of this chapter, 102-inch wide standard trucks in intrastate access travel shall enter and exit the State only on those specific routes designated for 102-inch standard trucks as authorized in this section and N.J.A.C. 16:32-1.4.

16:32-1.6 Reasonable access to terminals and other facilities

(a) Any person or terminal operator seeking reasonable access for double- trailer truck combinations, or other STAR authorized vehicles as defined in 23 CFR Part 658.5 and 658.13, or trucks wider than 96 inches but not more than 102 inches in width, from the system designated in N.J.A.C. 16:32-1.4, may do so by utilizing the route system as designated in N.J.A.C. 16:32-1.5, excluding the Garden State Parkway.

(b) Access from a designated route to a terminal should avoid areas considered residential as defined in N.J.S.A. 39:1-1 et seq.

(c) A double-trailer truck combination is permitted access from the system designated in N.J.A.C. 16:32-1.4 to facilities providing food, fuel, repairs and rest, within one mile roadway distance from the designated system except upon those roads, highways, streets, public alleys or other thoroughfares which cannot safely accommodate a double-trailer truck combination and are so designated by the Department.

(d) Unless otherwise prohibited, 102-inch wide standard trucks are permitted to travel up to two roadway miles from any intrastate access travel route designated in N.J.A.C. 16:32-1.5 for purposes of pickup and delivery and for access to terminals and facilities providing food, fuel, repairs and rest, except upon those roads, highways, streets, public alleys or other public thoroughfares which cannot safely accommodate a truck wider than 96 inches and are so designated by the Department. Truck movements

(Pl. Br. in Supp. of Mat. for Partial Sum. J. ("P1. Br.") at 9; Schwartz Certif. Ex. D: Final Regulations.) Under the Regulations, Restricted Vehicles traveling through the State with neither an origin nor a destination in the State, must stay on "National Network" roads and may deviate onto other roads only to access terminals and for limited distances to get food, fuel, repairs, and rest.[2]

N.J.A.C. 16:32-1.6. Restricted Vehicles with origins or destinations in the State are permitted to use local roads in addition to the National Network roads. Id. The stated purpose of the Regulations is to reduce the volume of large trucks on the non-National Network highways in order to protect the health, safety, and welfare of New Jersey residents. (Def. Br. in Supp. of Mot. for Partial Summ. J. ("Def. Br.") at 1, 6; Schwartz Certif. Ex. D: Final Regulations at 16:32-1.1.)

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which are made under the authority of this subsection must conform to all other State regulations and to any local "truck route" restrictions which have been adopted and posted as provided in N.J.S.A. 40:67-16.1 et seq.

[2] The National Network roads are designated by the federal Surface Transportation and Assistance Act of 1982 (the "STAA"), 49 U.S.C. 5 31111 et seq., as those roads that make up the "National System of Interstate and Defense Highways and those classes of qualifying Federal-aid Primary System Highways as designated by the Secretary." (See P1. 8r. at 3 n.2.) In New Jersey, these roads include Routes I-76, I-78, I-80, I-95, I-195, I-278, I-287, I-295, I-676, NJ-42, NJ-81, US-130, US-322, NJ-440, the New Jersey Turnpike, and the Atlantic City Expressway. (Def. Hr. in Supp. of Mot. for Partial Summ. J. at 5.)

Plaintiffs, who allege that the Regulations are unconstitutional, are the American Trucking Associations, Inc. (the "ATA") and US Xpress, Inc. ("USX"). The ATA is a national trucking trade association representing more than 2,000 members including corporations, partnerships, and individual proprietorships. (Pl. Br. at 1.) The ATA, a non-profit District of Columbia corporation headquartered in Virginia, claims to be suing on behalf of its members. (Certif. of David Barefoot filed 10-16-00) ("Barefoot Certif.") ¶2.) USX, a Nevada corporation, is an interstate motor carrier based in Tennessee. (Certif. of Steven Cleary filed 10-16-00 ("Cleary Certif.") ¶ 2.) Both the ATA members and USX regularly engage in interstate commerce in New Jersey, often using Restricted Vehicles. (Pl. Br. at 2.)

Plaintiffs seek partial summary judgment directed to the first four counts of the Complaint respectively alleging that the regulations violate the Commerce Clause (Counts I and II), the Privileges and Immunities Clause (Count III), and the Equal Protection Clause (Count IV) of the United States Constitution. (Pl. Mot. for Partial Summ. J. filed 10-16-00.) Defendants oppose the motion and move for summary judgment on the same counts. (Def. Mot. for Partial Summ. J. filed 10-16-00.)

DISCUSSION

I. Summary Judgment Standard

A motion for summary judgment is proper "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); see Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). When considering a motion for summary judgment, the evidence submitted must be viewed in the light most favorable to the nonmoving party. See Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986); Seitzinaer v.

Reading Hosp. & Med. Ctr., 165 F.3d 236, 238 (3d.Cir. 1999) (citation omitted). The party moving for summary judgment bears the initial burden of showing that there is no genuine issue of material fact. Celotex, 477 U.S. at 323.

Once the moving party has met its initial burden, the nonmoving party must establish that a genuine issue of material fact exists. Jersey Cent. Power & Light Co. v. Lacey Township, 772 F.2d 1103, 1109 (3d Cir. 1985). The nonmoving party may not rely on mere allegations; it must present actual evidence that creates a genuine issue of material fact. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986) (citing First Nat'l Bank of. Ariz. v. Cities Serv. Co., 391 U.S. 253, 290 (1968)); Schoch v. First Fid. Bancorp., 912 F.2d 654, 657 (3d Cir. 1990). Issues of fact are genuine only "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248. Material facts are only those facts that might affect the outcome of the action under governing law. Id.; Boyd v. Ford Motor Co., 948 F.2d 283, 285 (6th Cir. 1991). When the resolution of issues depends entirely on the interpretation of the applicable law, summary judgment is appropriate. See DiBiase v. SmithKline Beecham Corp., 48 F.3d 719, 724 (3d Cir. 1995).

II. The Commerce Clause

The United States Constitution provides that "Congress shall have Power . . . to regulate Commerce . . . among the several States." U.S. Const. art. I § 8. The Commerce Clause has been construed to include an "implied limitation on the power of the States to interfere with or impose burdens on interstate commerce." W. & S. Life Ins. Co. v. State Bd. of Equalization of Cal., 451 U.S. 648, 652 (1981). This implied limitation, known as the negative or dormant Commerce Clause, "'prohibits economic protectionism - that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state economic competitors.'" Tolchin v. Supreme Court of N.J., 111 F.3d 1099, 1106 (3d Cit. 1997)

(quoting New Energy Co. of Ind. v. Limbach, 486 U.S. 269, 273 (1988).

The first question a court must ask in performing a commerce clause analysis is whether the regulation at issue discriminates against interstate commerce. See Old Coach Rev. Coro. v. Tanzman, 881 F.2d 1227, 1231 (3d Cir. 1989). As articulated by the Third Circuit, "[d]iscrimination against interstate commerce entails imposing a burden on out-of-state vehicles or favoring those from in-state without a comparable favor for those from out-of-state." Larson, 683. F.2d at 799. Discrimination on the basis of citizenship is not the only object of the Commerce Clause, however.

> The Supreme Court has found discrimination where state regulation has an impact on interstate goods themselves, such as when the state regulation blocks the flow of articles in interstate commerce at a state's borders. See Sporhase v. Nebraska ex rel. Douglas, 458 U.S. 941, 102 S.Ct. 3456, 73 L.Ed.2d 1254 (1982) (invalidating Nebraska statute limiting the use of Nebraska ground water in adjoining states); Hughes v. Oklahoma, 441 U.S. 322, 99 S.Ct. 1727, 60 L.Ed.2d 250 (1979) (invalidating Oklahoma statute prohibiting the exportation of minnows for sale); Philadelphia v. New Jersey, 437 U.S. 617, 98 S.Ct. 2531, 57 L.Ed.2d 475 (1978) (invalidating New Jersey statute restricting importation of waste into the state).

Old Coach, 881 F.2d at 1231, 32 (finding regulatory scheme that imposes costs on interstate land transactions which are not imposed on intrastate land transactions regardless of citizenship of seller impermissibly discriminates). Thus, a court may find discrimination against interstate commerce, even if the relevant statute applies evenhandedly. Id. (citing Hunt v. Washington State Apple Advertising Comm'n, 432 U.S. 333, 350-52,(1977) (North Carolina law prohibiting the marketing of apples in boxes bearing gradings other than federally established ones

impermissibly restricted flow of Washington apples bearing state gradings into North Carolina)).

When a state statute or regulation discriminates on its face or operates in effect to favor in-state economic interests over out-of-state interests, a heavy burden is imposed on the defender of the legislation to "demonstrate both that the statute 'serves a legitimate local purpose,' and that this purpose could not be served as well by available nondiscriminatory means." Id. (quoting Maine v. Taylor, 477 U.S. 131, 138 (1986); Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth., 476 U.S. 573, 579 (1986). See Tolchin, 111 F.3d at 1107 ("Brown-Forman makes clear that a heightened scrutiny applies not only when legislation is facially discriminatory, but also when a state statute or regulation's 'effect is to favor in-state economic interests over out-of-state interests. . .'. ") Thus, a regulation faces a heightened scrutiny standard if it is driven by a discriminatory purpose or if it has a discriminatory effect. Brown-Forman, 476 U.S. at 579; Old Coach, 881 F.2d at 1231, Norfolk S. Corp. v.Oberly, 822 F.2d 388, 398-401 (3d Cir. 1987).

When a state regulation is not discriminatory, or its effect on interstate commerce is incidental, the Court evaluates it pursuant to a balancing test and the regulation will be upheld unless the burdens on interstate commerce are clearly excessive in relation to the putative local benefits. See Pike v. Bruce Church, Inc., 397 U.S. 137 (1970); Old Coach, 881 F.2d at 1231.

A. Highway Safety Regulations

Some confusion exists as to the proper standard to apply when analyzing the constitutionality of highway safety regulations under the Commerce Clause. State regulation in the field of highway safety traditionally is accorded great deference and the Supreme Court often has articulated its reluctance to invalidate such statutes. See Kassel v.Consol. Freightways

Corp. of Del., 450 U.S. 662, 669 (1981); Raymond Motor Transp., Inc. v. Rice, 434 U.S. 429, 442-43 (1978) (" [i] n no field has this deference to state regulation been greater than that of highway safety regulation"); Bradley v. Pub. Utils. Comm'n, 289 U.S. 92 (1933) (upholding state's refusal to license interstate carriers over certain highways due to traffic congestion). A strong presumption of validity is given to highway safety regulations that do not discriminate on their face or in effect. See Raymond, 434 U.S. at 443-44. Challengers may overcome the presumption by showing that the purported safety benefits are slight, problematic, or illusory. Larson, 683 F.2d at 793, 795. Absent such a showing, the court should uphold uniform safety statutes. Id.

In the major Commerce Clause cases involving such statutes, the Supreme Court has been openly split on the proper analysis. See, e.g., Kassel, 450 U.S. at 662 (plurality opinion with some justices favoring and some rejecting balancing approach); Raymond, 434 U.S. at 429 (articulating balancing approach). The Third Circuit directly confronted the existence of competing standards in American Trucking Associations, Inc. v. Larson, 683 F.2d 787 (3d Cir. 1982). Following the Supreme Court's reluctance to invalidate state regulation in the field of safety, the Third Circuit chose to apply the highly deferential standard, articulated by then-Justice Rehnquist in his Kassel dissent, for those cases involving nondiscriminatory highway safety regulations. Id.; Northfolk S. Corp. v. Oberly, 822 F.2d 388, 405 (3d Cir. 1987). The Third Circuit expressly rejected a balancing approach in the area of safety, believing a highly deferential standard to be more appropriate. Id. at 795. As a district court sitting in the Third Circuit, we are bound to accord uniform highway regulations such deference.

The highly-deferential standard accorded to state highway regulation applies only when the regulation is both facially neutral and neutral in effect. See Kassel, 450 U.S. at 675-76; Larson, 683 F.2d at 795 (finding deferential standard similar to rational basis should apply for evaluating nondiscriminatory

state regulations in the field of highway safety) (emphasis added); Norfolk, 822 F. 7d at 405 ("This court has applied a highly deferential standard in cases involving evenhanded highway safety regulations that do not create uniformity problems.") (citing Larson, 683 F.2d at 795 (emphasis added)). As the Court explained in Kassel,

> This traditional deference "derives in part from the assumption that where such regulations do not discriminate on their face against interstate commerce, their burden usually falls on local economic interests as well as other States' economic interests, thus insuring that a State's own political processes will serve as a check against unduly burdensome regulations." . . . Less deference to the legislative judgment is due, however, where the local regulation bears disproportionately on out-of-state residents and businesses.

450 U.S. at 675-76 (quoting Raymond, 434 U.S. at 444 n.18). The Third Circuit followed suit stating, "As long as the statute does not on its face or in fact discriminate against out-of-state interests or in favor of in-state interests, there is ample protection from such legislation in the democratic process itself." Larson, 683 F.2d at 795. The democratic process does not similarly protect against discriminatory legislation. Thus, when a regulation relating to highway safety discriminates on its face or in effect, the deferential standard does not apply and the regulation is subject to the same heightened scrutiny as any other discriminatory regulation.

To summarize, the Third Circuit standard with regard to highway safety regulation is as follows: for a regulation that does not discriminate on its face or in effect against out-of-state interests, a court is to accord the lawmakers great deference and uphold the statute absent a showing that the purported safety benefits are slight, illusory, or problematic. A safety regulation that is discriminatory on its face or in effect, is examined under

a heightened scrutiny and is struck down unless the proponent demonstrates that the law serves a legitimate local purpose, and that this purpose could not be served as well by available nondiscriminatory means.

B. The Regulations

Plaintiffs contend that the Regulations violate the Commerce Clause because they unfairly discriminate against out-of-state truckers in favor of local interests on their face, in their purpose, and in their effect. (Pl. Br. 15-30.)

Defendants counter that the regulations do not provide an economic advantage to New Jersey truckers but apply uniformly to all Restricted Vehicles regardless of where they are from, where they are registered, whether or not the drivers live in New Jersey, or whether they are engaged in interstate commerce. (Def. Br. at 12, 13.) Defendants further contend that requiring through-state drivers to remain on the National Network roads does not place an undue burden on interstate commerce; any minor "inconveniences" demonstrated, such as increased tolls, are far outweighed by the benefits of increased safety from reducing large truck traffic on congested local roads. (Id. at 15-19.)

Our first step is to decide whether the Regulations discriminate against interstate commerce. We find that the Regulations do not discriminate on their face. While the Regulations make a distinction between trucks with and without an origin or destination in New Jersey; on their face, the Regulations apply evenhandedly without regard to citizenship of the truck driver or owner. They restrict local road access based on the existence of an origin or destination in the state; this restriction applies with equal force to all truck drivers. The restriction on its face is a neutral one.

This finding does not end our inquiry with regard to the Regulations' discriminatory nature. A state regulation also

discriminates when its "effect is to favor in-state economic interests over out-of-state interests." Brown-Forman, 476 U.S. at 579. Plaintiffs allege that the Regulations will "potentially cost the trucking industry, and ultimately the national economy, millions of dollars annually." (Pl. Br. at 26.) They argue the burden comes in the form of increased toil costs, fuel consumption, and time needed to reach destinations. (Id. at 25-28.) They argue that the restrictions result in through-state truckers being unable to take alternative routes to avoid traffic congestion, construction, accidents, or weather-related problems. They claim that not being able to take "short cuts" results in an increase in miles driven. (Pl. Br. at 25.) Extra miles on the road, they, assert, increases the likelihood of accidents. (Id. at 28.) Further, taking longer for some trucks to reach their destinations could result in loss of business to competitors who can deliver goods more quickly. (Id. at 26-27.) According to plaintiffs, these possibilities comprise a burden on through-state trucking that New Jersey-based trucking does not face.

We need to examine, these factors when a record is more fully developed to decide if the Regulations impose actual increases in time and expense on interstate truckers. Evidence of a significant expense to out-of-state trucking not suffered by in-state trucking would demonstrate that the Regulations discriminate in their effect against out-of-state interests.[3] To make this determination on the facts currently before us would be premature. The principal commerce clause cases involving highway safety regulation were all decided only after the

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[3] We note that it will not be necessary for the Court to make an exact determination of the extent of discrimination. See, e.g., Old Coach, 881 F.2d at 431 ("There is no minimum threshold test that must be satisfied in order for a statute to violate the dormant Commerce Clause."); Maryland v. Louisiana, 451 U.S. 725, 759-69 (1981) (finding precise determination of extent of discrimination not needed to conclude state tax unconstitutionally discriminated).

development of extensive evidentiary records. See, e.g., Kassel, 450 U.S. 662 (district court below heard evidence on safety and burden on commerce during fourteen-day trial); Raymond, 434 U.S. 429 (extensive evidence including expert testimony presented to three-judge district court below before decision); Bibb, 359 U.S. 520 (three-judge district court below conducted two-day hearing); Larson, 683 F.2d 787 (district court below conducted hearings before issuing preliminary injunction and again before deciding case on merits). Accordingly, we will deny summary judgment at this time so that a full evidentiary record may be developed.

Development of the factual record will also assist us in applying the proper standard for evaluating the Regulations. Assuming arguendo we ultimately find the Regulations discriminate in effect against interstate commerce, more facts will be required to apply the heightened scrutiny standard. Under this standard, we would uphold the Regulations only if the defendants were to demonstrate that no alternative, nondiscriminatory means exist to accomplish their legitimate local purpose.

The Regulations were purportedly enacted to "help ensure the safety and well-being of the people who use [New Jersey] roadways" by "limiting interstate through travel of large trucks" to certain roads. (Def. Br. at 1, 6; Schwartz Certif. Ex. D: Final Regulations at 16:32-1.1.) The state's aim is to reduce accidents and motorist deaths from truck-related collisions by reducing the number of large trucks on local roads which are mostly "two and four-lane, undivided streets, some lined with commercial establishments and homes, and others remote, winding roads in rural areas." (Def. Br. at 2, 5.) The Supreme Court has found that regulating interstate vehicular traffic to limit the volume of traffic on certain roads is a legitimate means of promoting public safety. Bradley, 289 U.S. 92. But see Kassel, 450 U.S. 662 (rejecting as unconstitutional a highway regulation whose only apparent safety benefit was to reduce overall truck traffic on state highways by forcing large trucks to

detour around the state).

We find that ensuring the health and safety of its residents is a legitimate objective of the State. While plaintiffs argue that the Regulations were created with protectionist intent, based on the evidence so far, it appears that the Regulations do serve a legitimate local purpose, and would satisfy the first prong of the heightened scrutiny analysis.[4] However, at the hearing plaintiffs may submit evidence of discriminatory purpose to support their argument that the Regulations are essentially protectionist in nature.[5]

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[4] Plaintiffs argue that the stated purpose of the Regulations is to protect New Jersey based business. (Pl. Br. at 17.) They rely primarily on a portion of a comment made by Commissioner Weinstein in which he stated that broadening the reach of the regulations to cover intrastate trucking "would adversely impact New Jersey based businesses and the economic competitiveness of New Jersey based businesses." (See 31 N.J.R. 2904.) Such a comment, taken in context and in light of all the other evidence of intent, is somewhat weak evidence that the legitimate objectives forwarded by the State are merely a pretense. See Maine v. Taylor, 477 U.S. at 149 (finding paragraph near the end of 2000-word statement insufficient to prove economic protectionism). Further, the decision not to broaden the Regulations' reach does not go to their purpose of promoting safety, but to the means employed to satisfy that purpose.

[5] "A finding that state legislation constitutes 'economic protectionism' may be made on the basis of either discriminatory purpose or discriminatory effect." Old Coach Dev. Corn. v. Tanzman, 692 F. Supp. 424, 431 (D.N.J. 1988) aff'd 881 F.2d 1227 (3d Cir. 1989) (citing City of Phila. v. New Jersey, 437 U.S. 617, 624 (1979) ("The crucial inquiry .

A significant issue remains as to whether the state has proven that it lacks an alternative, non-discriminatory means for achieving its purported purpose. If we ultimately find the Regulations are discriminatory, defendants will have the burden of proving that such alternative means are not viable. The viability of other possible means is a factual issue about which we have not seen much evidence. Therefore, assuming we need to make a determination regarding alternative means, evidence will be taken to that end.

Assuming, on the other hand, that we find the Regulations are not discriminatory, we will apply the highly deferential standard of review favored by the Third Circuit, and uphold the regulations absent a showing that the safety benefits are slight, problematic or illusory. Factual issues exist as to the extent of the Regulations' overall safety benefits.

Given that genuine issues of material fact exist as to the threshold issue of whether the Regulations discriminate against interstate commerce, as well as to the Regulations' purpose, the existence of nondiscriminatory alternative means, and the nature of the purported safety benefits, we find a final decision at this stage would be inappropriate. Accordingly, we will deny both motions for partial summary judgment.

III. Privileges and Immunities and Equal Protection Clauses

The parties have also called for summary judgment on plaintiffs' claims that the Regulations violate the Privileges and Immunities Clause of Article IV and the Equal Protection

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. . must be directed to determining whether (the challenged statute] is basically a protectionist measure, or whether it can fairly be viewed as a law directed to legitimate local concerns, with effects upon interstate commerce that are only incidental.")).

Clause of the Fourteenth Amendment to the United States Constitution. An analysis of the Regulations under either of these clauses is similar to the Commerce Clause analysis set out above. In view of our decision to deny summary judgment on plaintiffs' Commerce Clause claims, it is not necessary to discuss alternative bases for our decision. The parties may renew these alternative arguments at the hearing if desired.

An appropriate Order accompanies this Memorandum Opinion.

APPENDIX E

Constitutional Provision

"The Congress shall have Power . . . To regulate Commerce . . . among the several States." U.S. Const. art. I, §8, cl.3.

APPENDIX F

State Regulations.

N.J. Admin. Code §16:32-1.1 Purpose

The New Jersey Department of Transportation has determined that it is in New Jersey's best interest to limit interstate through travel of large trucks to the National Network, the NJ Turnpike, and the Atlantic City Expressway. Large trucks restricted herein include 102 inch wide standard trucks and double trailer truck combinations. Interstate through travel for the purposes of this chapter shall be travel with both an origin and destination outside of New Jersey. Reasonable access shall be permitted to terminals and to facilities for food, fuel, repairs, and rest.

N.J. Admin. Code §16:32-1.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. "Double-trailer truck combination" means a truck tractor-semitrailer-trailer combination, and which meets the equipment length requirement as set forth in N.J.S.A. 39:3-84 and 23 CFR 658.13. . . .

"Interstate through travel" means those trips with neither an origin nor destination in New Jersey.

"Intrastate access travel" means those trips with an origin and/or a destination in New Jersey.

"102-inch wide standard truck" means a truck greater than 96 inches but not greater than 102 inches in width, exclusive of mirrors and other safety devices, and which meets the equipment length requirements as set forth in N.J.S.A. 39:3-84(3) and (4), as amended.

"Terminal" means any location where freight originates, terminates, or is handled in the transportation process and, when serviced by twin trailers, includes sufficient off-street area for ingress, egress, drop off or pick up and maneuvering of twin trailer combinations. Additionally, a motor carrier operating facility, a distribution center, or a rail, waterborne, or air terminal shall be considered the same as a terminal.

N.J. Admin. Code §16:32-1.3 General provisions

(a) Double-trailer truck combinations and 102-inch wide standard trucks are permitted to operate in New Jersey only to the extent and under the conditions authorized by the rules in this chapter.

(b) For purposes of clarity, these rules do not supersede other State regulations outside of this chapter, municipal ordinances and county resolutions which may otherwise restrict or control the movements of trucks or other vehicles. An example of such a restriction is a maximum weight posting.

(c) The maximum width permitted on the routes designated in N.J.A.C. 16:32-1.4 and 1.6(c) is 102 inches, exclusive of mirrors and other safety devices.

N.J. Admin. Code §1.6:32-1.4 Designated interstate through travel routes for double-trailer truck combinations and large 102-inch wide standard trucks (National Network)

(a) Except as provided in N.J.A.C. 16:32-1.6, Reasonable access to terminals and other facilities, double-trailer truck combinations and 102-inch wide standard trucks in interstate through travel may be operated in New Jersey only on the National Network as designated in 23 CFR Part 658 in addition to the New Jersey Turnpike, and the Atlantic City Expressway. The roads that may be used for interstate through travel are listed below and are hereinafter referred to as the "National Network": . . .

N.J. Admin. Code §16:32-1.5 Designated intrastate access travel routes (NJ Access Network)

(a) The following routes are designated as intrastate access travel routes for 102-inch wide standard trucks and double-trailer truck combinations for access to terminals, businesses, pickups, and deliveries. 102-inch wide standard trucks and double-trailer truck combinations may travel freely for these purposes an these routes hereinafter referred to as the "NJ Access Network":

1. All State routes with the exception of those listed under Appendix A, incorporated herein by reference, approximately 1,812 miles;

2. All county "500" series roads with the exception of those listed under Appendix B, incorporated herein by reference, approximately 1,734 miles;

3. Those county "600" series roads listed under Appendix C, incorporated herein by reference, approximately 80 miles; and

4. The New Jersey Turnpike, the Atlantic City Expressway and the Garden State Parkway south of Exit 105. Use of these routes is subject to the regulation of the New Jersey Turnpike Authority, the South Jersey Transportation Authority and the New Jersey Highway Authority, respectively.

(c) Designation of any route in this chapter as an intrastate access travel route for 102-inch wide standard trucks is a designation which pertains to permissible widths only. Such designation does not always guarantee free movement of all 102-inch wide standard vehicles. Some 102-inch wide standard vehicle movements may be restricted on a route because of route or bridge weight restrictions and/or vertical clearance restrictions.

(d) 102-inch wide standard trucks may be permitted to detour off the authorized routes only to the extent necessary to bypass road closings, and route restrictions such as weight or vertical clearance limits. 102-inch wide standard trucks shall return to the designated network as soon as practicable during a detour movement.

(e) Notwithstanding any other provisions of this chapter, 102-inch wide standard trucks in intrastate access travel shall enter and exit the State only on those specific routes designated for 102-inch standard trucks as authorized in this section and N.J.A.C. 16:32-1.4.

N.J. Admin. Code §16:32-1.6 Reasonable access to terminals and other facilities.

(a) Any person or terminal operator seeking reasonable access for double-trailer truck combinations, or other STAR authorized vehicles as defined in 23 CFR Part 658.5 and 658.13, or trucks wider than 96 inches but not more than 102 inches in width, from the system designated in N.J.A.C. 16:32-1.4, may do so by utilizing the route system as designated in N.J.A.C. 16:32-1.5, excluding the Garden State Parkway.

(b) Access from a designated route to a terminal should avoid areas considered residential as defined in N.J.S.A. 39:1-1 et seq.

(c) A double-trailer truck combination is permitted access from the system designated in N.J.A.C. 16:32-1.4 to facilities providing food, fuel, repairs and rest, within one mile roadway distance from the designated system except upon those roads, highways, streets, public alleys or other thoroughfares which cannot safely accommodate a double-trailer truck combination and are so designated by the Department.

(d) Unless otherwise prohibited, 102-inch wide standard trucks are permitted to travel up to two roadway miles from any intrastate access travel route designated in N.J.A.C. 16:32-1.5

for purposes of pickup and delivery and for access to terminals and facilities providing food, fuel, repairs and rest, except upon those roads, highways, streets, public alleys or other public thoroughfares which cannot safely accommodate a truck wider than 96 inches and are so designated by the Department. Truck movements which are made under the authority of this subsection must conform to all other State regulations and to any local "truck route" restrictions which have been adopted and posted as provided in N.J.S.A. 40:67-16.1 et seq.

Supreme Court, U.S.
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No. 05-1638

In the Supreme Court of the United States

JON CORZINE, in his official capacity as Governor of the State of New Jersey, *et al.*,

Petitioners,

v.

AMERICAN TRUCKING ASSOCIATIONS, INC. AND US XPRESS, INC.

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether state regulations that impose special burdens on trucks traveling interstate – confining trucks that conduct an exclusively interstate business to certain interstate highways, while allowing otherwise identical trucks that conduct intrastate business to use state and local roads – violate the Commerce Clause of the U.S. Constitution.

TABLE OF CONTENTS

Page

QUESTION PRESENTED I

TABLE OF AUTHORITIES iii

STATEMENT 1

REASONS FOR DENYING THE PETITION 6

CONCLUSION 9

TABLE OF AUTHORITIES

Page(s)

Cases:

American Trucking Ass'ns, Inc. v. Scheiner, 483 U.S. 266 (1987) 6

Bacchus Imports, Ltd. v. Dias, 468 U.S. 263 (1984) 6

Bibb v. Navaho Freight Lines, Inc., 359 U.S. 520 (1959) 7

C&A Carbone, Inc. v. Town of Clarkstown, 511 U.S. 383 (1994) 5, 6

Chemical Waste Mgmt., Inc. v. Hunt, 504 U.S. 334 (1992) 6

Granholm v. Heald, 544 U.S. 460 (2005) 5, 6

Kassel v. Consolidated Freightways Corp., 450 U.S. 662 (1981) 7

Kraft General Foods, Inc. v. Iowa Dept. of Rev. & Fin., 505 U.S. 71 (1992) 8

Oregon Waste Sys., Inc. v. Department of Envtl. Quality, 511 U.S. 93 (1994) 5, 6

Philadelphia v. New Jersey, 437 U.S. 617 (1978) 5

Pike v. Bruce Church, Inc., 397 U.S. 137 (1970) 7

Raymond Motor Transp., Inc. v. Rice, 434 U.S. 429 (1978) 3, 7

STATEMENT

This case involves a challenge to New Jersey regulations that discriminate, both facially and in practical effect, against trucks traveling interstate. Those regulations confine certain large trucks traveling through New Jersey to a limited number of interstate highways, even when use of state or local roads by those trucks would be more direct or economical. At the same time, the regulations allow otherwise identical trucks to make extensive use of state or local roads so long as those trucks travel a route that originates or terminates in New Jersey. The courts below struck down these regulations under the Commerce Clause of the U.S. Constitution. Because the decision below correctly applies settled law, is wholly consistent with this Court's holdings, and does not depart from the rulings of other courts of appeals, further review is not warranted.

1. The New Jersey regulations at issue in this case involve certain large trucks – double trailer-truck combinations and 102-inch wide tractor trailers – that are collectively described as "restricted vehicles." With limited exceptions not relevant here, the regulations require restricted vehicles that are traveling *through* New Jersey with neither an origin nor a destination in the State to confine their operations to the national network of interstate highways (the "national network"). There are approximately 546 miles of national network interstate highways in New Jersey. In contrast, the regulations permit restricted vehicles that are engaged in purely intrastate commerce or in interstate commerce that includes an origin or destination in New Jersey to use both the national network *and* the so-called New Jersey network, a much larger 3600-mile system of state and local secondary roads. Pet. App. 3a-4a. Penalties for interstate truckers who violate the regulations by using the New Jersey network include an escalating series of mandatory fines. *Id.* at 4a.

Under this regulatory regime, "trucks doing business in New Jersey are allowed unlimited access to the New Jersey network." Pet. App. 13a. Thus, as the district court explained, "[a] vehicle otherwise matching the definition of a "Restricted Vehicle but that is engaged purely in intrastate commerce or interstate commerce involving an origin or destination in New Jersey may use the New Jersey Access Network for any portion of its trip, not merely the portion required to reach a particular point of origin or destination." *Id.* at 36a. "This means that such a vehicle with a delivery in the northern most portion of the State may use even those roads that run only through the [s]outhern most portion of the State." *Ibid.*

Unsurprisingly, this system imposed substantial costs on trucks that passed through, but did not stop to do business in, New Jersey. See Pet. App. 13a-14a. For example, the court of appeals noted that the State's own evidence "showed that the trip from Philadelphia to upstate New York was longer in distance and time, and costlier in tolls and fuel, when the driver was forced to use the National Network instead of the New Jersey network." *Id.* at 13a n.5. Relying solely on the testimony of New Jersey's expert and looking only at a subset of trucks traveling only a single route, the district court accordingly found that, "at minimum, the Regulations in question result in an aggregate negative [annual] economic impact on those carriers engaged in purely interstate commerce of between $1,333,000 and $4,434,000." *Id.* at 42a. The aggregate cost imposed on all interstate trucks by the New Jersey regulations is substantially greater.

2. Respondents, an interstate motor carrier and a national trucking trade association, brought this action in United States District Court for the District of New Jersey, contending that the New Jersey regulations discriminate against trucks traveling interstate and therefore violate the Commerce Clause. After denying both parties' motions for summary judgment (see Pet. App. 53a-72a) and holding a

trial, the district court found the regulations unconstitutional. *Id.* at 26a-52a.

The court explained:

> Because the Regulations exempt those carriers engaged in purely intrastate commerce or interstate commerce involving New Jersey, enabling those carriers to operate at lower costs by avoiding toll roads, minimizing distances and/or choosing faster routes than those Restricted Vehicles passing through New Jersey to engage in commerce elsewhere, this Court is satisfied that the regulations discriminate in favor of in-state commerce and against commerce in other states.

Pet. App. 47a-48a. The court added that the State's exemption of carriers that conduct business in New Jersey from the restrictive regulations "weakens the presumption in favor of the validity of highway safety regulations because it 'undermine[s] the assumption that the State's own political processes will act as a check on local regulations that unduly burden interstate commerce.'" *Id.* at 48a (quoting *Raymond Motor Transp., Inc.* v. *Rice*, 434 U.S. 429, 446-447 (1978)).

The court also found "as a matter of fact that the Regulations could require that Restricted Vehicles with business in the State use the New Jersey Access Network only as needed to reach particular origins or destinations and to return to the National Network consistent with the vehicle's next destination point." Pet. App. 44a. Because the court therefore saw "no reason why the State could not have passed a workable Regulation that more evenly restricted both carriers doing business outside of the State, as well as those doing business within the State," it "conclude[d] that there are available nondiscriminatory means by which the State can achieve its purported purpose of minimizing congestion and enhancing the safety of its citizens." *Id.* at 51a-52a (footnote omitted). In this regard, the court noted

evidence that workability was not the only reason New Jersey wholly exempted trucks that did business in the State from the regulations; the Commissioner of New Jersey's Department of Transportation had opposed broadening the regulations to reach all restricted vehicles, including those whose travel originated or terminated in the State, because doing so "'would adversely impact New Jersey based businesses and the economic competitiveness of New Jersey based businesses.'" *Id.* at 51a (citation omitted).

3. The court of appeals affirmed. Pet. App. 1a-19a. The court began by observing that "*non-discriminatory* highway safety statutes must be given a more deferential treatment, and may not be overturned absent a showing that the safety benefits are slight, problematic, or illusory." *Id.* at 11a (emphasis added). But the court held that principle inapplicable here because the New Jersey regulations "are facially discriminatory." *Id.* at 13a.

The court explained:

> The text of the regulations explicitly distinguishes out-of-state trucks that are passing through New Jersey and imposes additional burdens on these trucks. The Regulations deny trucks of out-of-state businesses that pass through New Jersey access to 3600 miles of New Jersey Network roads. * * * Meanwhile, trucks doing business in New Jersey are allowed unlimited access to the New Jersey Network. * * * [T]he Regulations explicitly impose costs on the citizens and businesses of other states while exempting New Jersey's own citizens and businesses from those same costs. For this reason, we find the Regulations facially discriminatory.

Pet. App. at 14a. Having reached that conclusion, the court held that New Jersey's regulations could not survive the heightened scrutiny applicable to state regulations that

expressly discriminate against interstate commerce. *Id.* at 14a-16a (citing *Granholm* v. *Heald*, 544 U.S. 460, 472 (2005), *Oregon Waste Sys., Inc.* v. *Department of Envtl. Quality*, 511 U.S. 93 (1994), and *Philadelphia* v. *New Jersey*, 437 U.S. 617 (1978)).

Alternatively, the court held that the regulations could not survive because they "are discriminatory in effect." Pet. App. 16a. Pointing to the district court's factual findings, the court of appeals observed that, under the regulations, "many truckers involved in interstate commerce with no origin or destination in New Jersey would be forced to take longer and costlier routes when forced to use the National Network rather than the New Jersey Network." In contrast, "[c]ommercial interests which rely on imports from and exports to New Jersey are not subject to these increased costs." *Ibid.* In practical effect, then, the regulations "'impose commercial barriers or discriminate against an article of commerce by reason of its origin or destination out of state.'" *Id.* at 17a (quoting *C&A Carbone, Inc.* v. *Town of Clarkstown*, 511 U.S. 383, 390 (1994)).

The court of appeals also agreed with the district court "that a non-discriminatory alternative was available in the form of a regulation that would prohibit all trucks, regardless of origin or destination, from using the New Jersey Network except as needed to reach the National Network from a New Jersey origin, to reach a New Jersey destination from the National Network, or to access food, rest, fuel, or repairs." Pet. App. 18a. The court rejected the State's argument that this alternative was not feasible because enforcement would require police to conduct random stops of restricted vehicles and to make difficult determinations regarding whether a particular truck had to be on a state road to reach its destination; as the court noted, such stops *also* were necessary to police compliance with the regulations as written. *Id.* at 18a-19a. The Third Circuit therefore held that the district court's "conclusion that a non-discriminatory

alternative was available was based on solid reasoning and grounded in the evidence." *Id.* at 19a.

REASONS FOR DENYING THE PETITION

Petitioners argue that further review is warranted because Commerce Clause doctrine is unclear. But there is no ambiguity about the settled constitutional principle that controls in this case. The challenged New Jersey regulation expressly provides valuable benefits to trucks that conduct intrastate business, while withholding those benefits from otherwise identical trucks that make their pick-ups and deliveries in other states. Petitioner does not, and could not, cite any decision of any court upholding such a discriminatory regulation. Accordingly, the decision below was correct and the petition should be denied.

1. In seeking review, petitioners maintain that Commerce Clause doctrine is confused. Pet. 8-9, 10-11. Of course, there doubtless are areas where the jurisprudence of the Commerce Clause is murky. See generally *American Trucking Ass'ns, Inc.* v. *Scheiner*, 483 U.S. 266, 280 (1987). But this case does not involve any such uncertainty. The rule that governs here has long been settled: "Discrimination against interstate commerce in favor of local business or investment is *per se* invalid, save in a narrow class of cases in which the [state] can demonstrate, under rigorous scrutiny, that it has no other means to advance a legitimate local interest." *Carbone*, 511 U.S. at 393. See, *e.g.*, *Granholm*, 544 U.S. at 472 ("Time and again this Court has held that, in all but the narrowest circumstances, state laws violate the Commerce Clause if they mandate 'differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.'") (quoting *Oregon Waste Sys.*, 511 U.S. at 99); *Chemical Waste Mgmt., Inc.* v. *Hunt*, 504 U.S. 334, 342 (1992) ("[o]nce a state [law] is found to discriminate against out-of-state commerce, it is typically struck down without further inquiry"); *Bacchus Imports, Ltd.* v. *Dias*, 468 U.S. 263, 269 (1984). As the Third Circuit

correctly held, that principle is dispositive in a case, like this one, where the state law at issue discriminates on its face against interstate businesses.

2. Petitioners nevertheless maintain that state regulations intended to enhance highway safety "are entitled to a deferential standard of review" (Pet. 9-10, 13), pointing to *Kassel* v. *Consolidated Freightways Corp.*, 450 U.S. 662 (1981), *Raymond Motor Transp., Inc.* v. *Rice*, 434 U.S. 429 (1978), and *Bibb* v. *Navaho Freight Lines, Inc.*, 359 U.S. 520 (1959). At least in the circumstances of this case, the State's assertion is incorrect.

For one thing, we note that the Court *struck down* the state highway regulations at issue in each of those cases. But more fundamentally, the analysis used in those decisions simply has no bearing here. The decisions cited by petitioners involved facially *neutral* regulations and therefore called for application of the balancing test articulated in *Pike* v. *Bruce Church, Inc.*, 397 U.S. 137 (1970), to govern nondiscriminatory state laws. See *Kassel*, 450 U.S. at 670-671 (plurality opinion); *Raymond Motor*, 434 U.S. at 443 ("*Bibb* * * * stat[ed] the test to be applied to state highway regulation in terms similar in principle to the subsequent formulation in *Pike* v. *Bruce Church, Inc.*"). In contrast, the Court made clear in each cited decision that a much stricter standard applies when – as in this case – the state regulations "discriminate on their face against interstate commerce." *Raymond Motor*, 434 U.S. at 444 n.18. See *Kassel*, 450 U.S. at 675-676 (plurality opinion) ("Less deference to the legislative judgment is due * * * where the local regulation bears disproportionately on out-of-state residents and businesses."); *id.* at 680 (Brennan, J., concurring in the judgment) ("Protectionist legislation is unconstitutional under the Commerce Clause, even if the burdens and benefits are related to safety rather than economics."); *Bibb*, 359 U.S. at 529.

Against this background, deference is not due New Jersey's discriminatory regulations and the Commerce Clause anti-discrimination principle resolves this case. Petitioners do not, and could not, deny that the New Jersey regulations expressly accord differing treatment to truckers depending upon whether they do business in-state or out-of-state – and it is obvious, as both lower courts found as a matter of fact, that New Jersey's disparate treatment imposes real and significant burdens on the out-of-staters. Petitioners do suggest that the State did not set out to disadvantage interstate businesses when it implemented the regulations. Pet. 13. But assuming that proposition to be true – a point that is by no means clear from the record[1] – it is immaterial: even when "discrimination against foreign commerce * * * is intended to promote administrative convenience rather than economic protectionism, * * * [a]bsent a compelling justification, * * * a State may not advance its legitimate goals by means that facially discriminate against foreign commerce." *Kraft General Foods, Inc.* v. *Iowa Dept. of Rev. & Fin.*, 505 U.S. 71, 81 (1992).

Nor is this a case in which discrimination is essential to advance an important state interest. Both courts below found as a matter of fact that the State has available to it a practicable, nondiscriminatory approach that was equally effective in advancing safety goals. Petitioners do not contest that conclusion here. After all, the challenged regulations do far more than allow use of New Jersey roads when necessary to make in-state pick-ups or deliveries; under

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[1] As noted above, the Commissioner of New Jersey's Department of Transportation opposed broadening the state regulations to reach all restricted vehicles, including those whose travel originated or terminated in the State, on the ground that an expansion of the regulations "'would adversely impact New Jersey based businesses and the economic competitiveness of New Jersey based businesses.'" Pet. App. 51a (citation omitted).

the regulations, a truck making a pick-up in (for example) Cape May, in the far south of the State, is allowed unlimited use of New Jersey network roads near Patterson, in the far north. In this Court, petitioners offer no defense of this regime.

In short, petitioners do not identify any conflict in the lower courts on the question presented here. They do not cite any decision of this Court that is in tension with the holding below. And they point to no evidence that there is any confusion about the constitutional status of state laws – highway regulations or otherwise – that work a facial discrimination against interstate commerce. Review of the Third Circuit's decision therefore is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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